



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

J. B. L. & Co.
Vietnam
NEW LAW BOOKS
PUBLISHED BY
WM. CLOWES & SONS, LIMITED,

LAW PUBLISHERS AND BOOKSELLERS,

*Printers and Publishers to the Incorporated Council of Law Reporting
for England and Wales.*

27, FLEET STREET, LONDON, E.C.

(Six doors east of Inner Temple Lane.)

Just published, Second Edition, thoroughly revised. Demy 8vo, 2 vols., cloth, 38s.

BRETT'S COMMENTARIES on the PRESENT LAWS OF ENGLAND. By THOMAS BRETT, B.A., LL.B., Author of "Leading Cases in Modern Equity," and Joint Author of "Clerke and Brett's Conveyancing Acts, 1881-82."

* * A main idea of this book is to bring into special prominence the present and living law, and only to deal with past law, or that which is practically obsolete, so far as it is necessary to enable the reader to understand the present.

The Law Journal says, in the course of an exhaustive review:—"We are able confidently to recommend these Commentaries to students, with whom we venture to predict they will become deservedly popular. . . . Mr. Brett's Commentaries are thoroughly comprehensive, and we have little but praise for the manner in which he has discharged his self-imposed task. . . . We are of opinion that Mr. Brett has produced a work of very considerable merit."

WOLSTENHOLME'S CONVEYANCING ACTS.

Now ready, Fifth Edition, royal 8vo, cloth, 17s. 6d.

FORMS AND PRECEDENTS FOR USE UNDER THE CONVEYANCING ACTS 1881 and 1882, and the SETTLED LAND ACTS 1882 to 1890. By EDWARD PARKER WOLSTENHOLME, M.A., of Lincoln's Inn, Barrister-at-Law, one of the Conveyancing Counsel of the Court.

THE NEW PRACTICE IN "WINDING-UP."

Now ready, embracing all the recent legislation, 1100 pages, demy 8vo, cloth, 35s.

EMDEN'S PRACTICE IN WINDING-UP COMPANIES.

Fourth Edition. With all the Bankruptcy Decisions and Practice so far as they relate to the subject. By the Author. Containing the New Act and Rules and Forms.

ROBSON'S LAW OF BANKRUPTCY.

Just Published. Demy 8vo, cloth, 15s.

A SUPPLEMENT to the SIXTH EDITION OF ROBSON'S TREATISE on the LAW OF BANKRUPTCY, containing a full Exposition of the alterations in the Law made by the Bankruptcy Act, 1890, and the Bankruptcy (Discharge and Closure) Act, 1887. By GEORGE YOUNG ROBSON, Esq., Barrister-at-Law.

BY THE SAME AUTHOR. Sixth Edition, royal 8vo, cloth, 38s.

ROBSON'S LAW OF BANKRUPTCY. Containing a Full Exposition of the Principles and Practice of the Law. By GEORGE YOUNG ROBSON, Esq., Barrister-at-Law.

"We know of no better treatise on this branch of our law, and, looking to the number of editions through which it has passed, our opinion is apparently shared by the Profession."—*Law Times*.

BY THE SAME AUTHOR. Demy 8vo, cloth, 9s.

PRIVATE ARRANGEMENTS WITH CREDITORS (a Treatise on the Law of), with an Appendix containing the Deeds of Arrangement Act, 1887, the Bills of Sale Acts, 1878 and 1882, and the Bankruptcy (Discharge and Closure) Act, 1887, with the Rules under the above Acts. Also Precedents of Deeds of Arrangement.

Second Edition, Revised, with Cases to Date, demy 8vo., cloth, 21s.; cash price, 17s.

STEPHEN'S COUNTY COURT ACTS, ORDERS, AND PRACTICE. According to the scheme of the work, the Rules are printed immediately after the respective sections of the several enactments to which they principally relate, thereby enabling the reader to see at a glance Section, Notes, and Rules thereon. By HENRY STEPHEN, of the Middle Temple, Barrister-at-Law, Editor of the Ninth Edition of "Stephen's Commentaries," and Joint Author of "The County Council Compendium," and REGINALD ARTHUR STEPHEN, Registrar of the Lincoln County Court.

"As a practice book pure and simple this has much to recommend it. . . . The practitioner finds grouped together all the necessary information with regard to any particular matter. . . . Every possible facility for easy and expeditious reference is afforded. The Rules are concise, without any sacrifice of utility, for the information they afford is complete."—*Law Times*.

24/6/92

Demy 8vo, cloth, 20s.

THE SALE OF GOODS, including the Factors Act, 1889. With an Introduction and Appendices containing Statutes and Notes, &c. By HIS HONOUR JUDGE CHALLMERS.

Demy 8vo, cloth, 20s.

THE LAW OF NUISANCES. With Statutory Appendix. By E. W. GARRETT, M.A., of the Inner Temple and Midland Circuit, Barrister-at-Law.

Second Edition, demy 8vo, cloth, 25s.

HIGGINS'S DIGEST OF THE LAW OF PATENTS. A Digest of the Law and Practice of Letters Patent for Inventions, including the Statutes and all Cases decided from the passing of the Statute of Monopolies to October, 1890. Second Edition. By CLEMENT HIGGINS, Q.C., Recorder of Birkenhead, and G. EDWARDES JONES, Barrister-at-Law.

Second Edition, thoroughly Revised, demy 8vo, cloth, 12s. 6d.

THE LAW OF COPYRIGHT. By THOMAS EDWARD SCRUTTON, M.A., LL.B., Barrister-at-Law, Author of "Charter Parties and Bills of Lading," &c., and Lecturer in Common Law to the Incorporated Law Society.

Demy 8vo, cloth, 10s.

ARTISTIC COPYRIGHT (The Law of), including Copyright in Paintings, Drawings, Photographs, Engravings, Sculpture, and Designs. With an Appendix of Statutes and Collection of Precedents. By REGINALD WINSLOW, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law.

"This is a book we can thoroughly recommend to any person, whether lawyer or artist, who is interested in the subject."—*Athenaeum*.

"Mr. Winslow . . . is clear, accurate, and practical, and has made a valuable contribution to the subject with which he deals."—*Law Journal*.

"The object of this book is to explain the rights of Authors of artistic works of every description, and it is so satisfactorily attained, that the work is one that should be in the hands of every artist."—*Magazine of Art*.

THE ENGLISH DEATH DUTIES.

In cloth case, price 2s. 6d.

A TABLE SHOWING AT A GLANCE THE INCIDENCE OF THE ENGLISH DEATH DUTIES. With the Statutes imposing them, the Forms used in their payment, and under what circumstances each or any become payable, with various useful Notes. Designed for the use of Solicitors and others. By E. HARRIS, of the Legacy and Succession Duty Department, Somerset House.

Royal 8vo, 700 pp. Cloth, £2 2s.

INFORMATIONS (Criminal and Quo Warranto), MANDAMUS, and PROHIBITION. By JOHN SHORTT, LL.B., of the Middle Temple, Barrister-at-Law, Author of "The Law Relating to Works of Literature and Art (Copyright, Libel, &c.)."

Demy 8vo, cloth, 25s.

LEADING CASES IN MODERN EQUITY. By THOMAS BRETT, of the Middle Temple, Barrister-at-Law, LL.B., Joint Author of "Clerke and Brett's Conveyancing Acts," and Lecturer in Equity to the Incorporated Law Society, &c.

Specially recommended as a Text Book for "the Final" by the *Solicitors' Journal*.

Demy 8vo, cloth, 10s. 6d.

PETITION OF RIGHT (The Law and Practice of) under the Petitions of Right Act, 1860. With Forms and an Appendix containing the Laws regulating proceedings by Petition of Right in Ireland, Scotland, and certain Colonies and Dependencies. By WALTER CLODE, of the Inner Temple, Barrister-at-Law.

Royal 8vo, cloth, 21s.

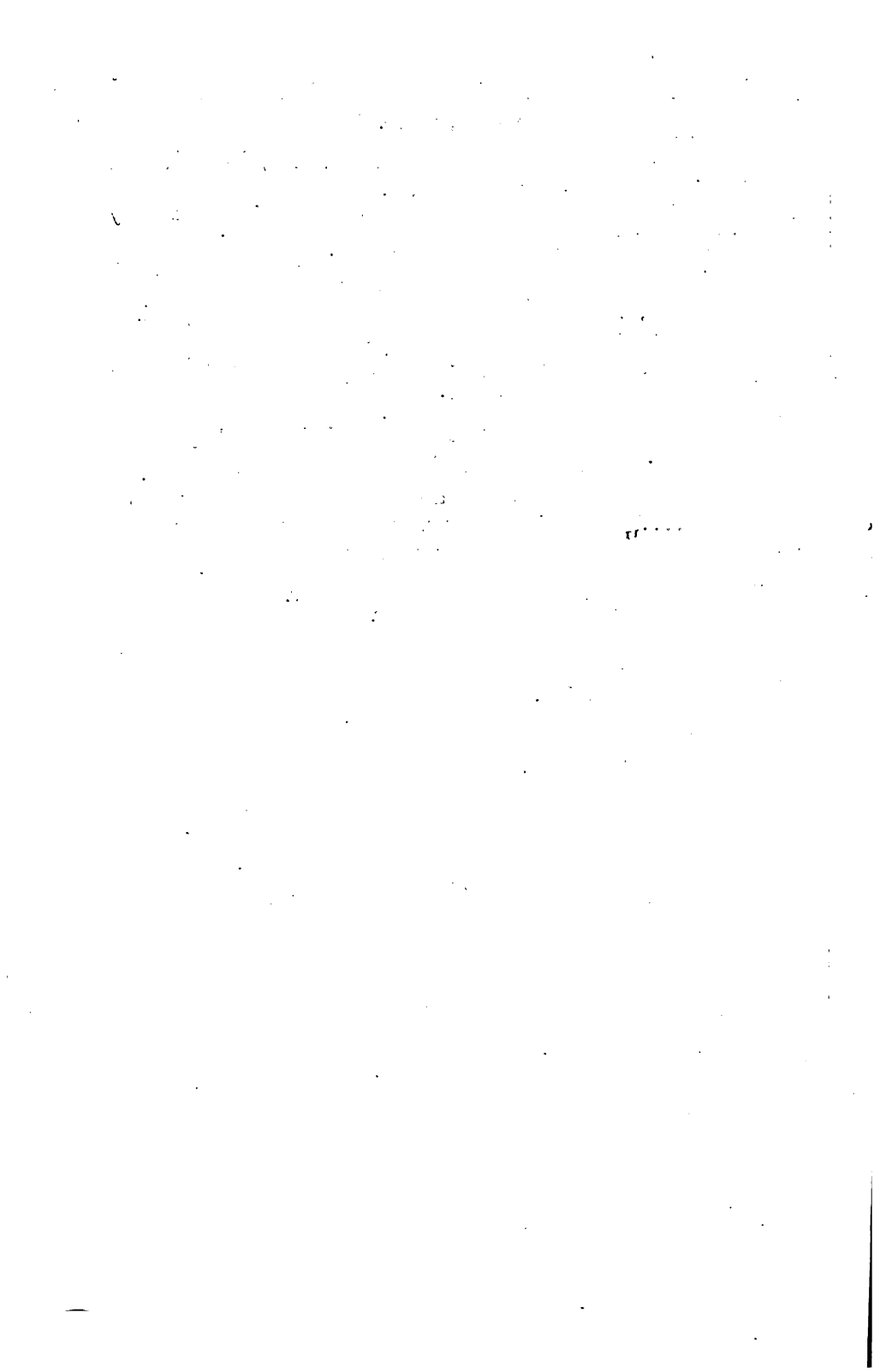
A COUNTY COURTS FORMULIST; being a Compendium of carefully prepared Precedents in all proceedings in Actions and Matters within the Ordinary, Equity, and Special Statutory Jurisdictions of County Courts (except Admiralty and Bankruptcy), together with Practical Observations and Directions thereon, and References to Cases decided up to date of publication. With a copious Index. By R. AUSTEN DALE, Barrister, recently Solicitor, Birmingham.

Crown 8vo, cloth, 7s. 6d.

COSTS IN THE COUNTY COURTS, exclusive of Admiralty and Bankruptcy; being a Guide to their Allowance by the Judge and Taxation by the Registrar. By CHARLES CAUTHERLEY, one of the Registrars of the County Court of Yorkshire holden at Leeds, and of the Leeds District Registry of the High Court of Justice.

Demy 8vo, cloth, £1 11s. 6d.

THE LAW OF RENTS, with Special Reference to the Sale of Land in consideration of a Rent Charge or Chief Rent. By W. A. COPINGER, of the Inner Temple, Barrister-at-Law, Author of "The Law of Copyright in Works of Literature and Art," &c., &c.; and J. E. CRAWFORD MUNRO, LL.M., of the Middle Temple, Barrister-at-Law.



F. B. GREGORY.
VICTORIA. A. C.

THE

LAW OF THE PRESS:

A DIGEST OF THE LAW SPECIALLY
AFFECTING NEWSPAPERS;

With a Chapter on Foreign Press Codes;

AND AN

Appendix containing the Text of all the Leading Statutes.

BY

JOSEPH R. FISHER, B.A.,

OF THE MIDDLE TEMPLE, AND THE NORTHERN CIRCUIT, ESQUIRE, BARRISTER-AT-LAW,

AND

JAMES ANDREW STRAHAN, LL.B.,

OF THE MIDDLE TEMPLE AND MIDLAND CIRCUIT, ESQUIRE, BARRISTER-AT-LAW; REGIUS
PROFESSOR OF ENGLISH LAW, QUEEN'S COLLEGE, BELFAST; JOINT AUTHOR OF
MACASKEY AND STRAHAN ON THE LAW RELATING TO CIVIL ENGINEERS.

LONDON:

WILLIAM CLOWES AND SONS, LIMITED,
27, FLEET STREET.

1891.

LONDON:
PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
STAMFORD STREET AND CHANCERY CROSS.

TO
THE RIGHT HONOURABLE
JOHN DUKE, BARON COLERIDGE,
LORD CHIEF JUSTICE OF ENGLAND,
IN GRATEFUL ACKNOWLEDGMENT
OF PAST KINDNESS,
THIS LITTLE VOLUME
IS
Most Respectfully Dedicated
BY
THE AUTHORS.

P R E F A C E.

CONSIDERING what an important factor in the social and political life of the nation Newspapers have become, it is somewhat remarkable that hitherto no book has been published devoted solely to the law affecting them. It is true that Newspaper law has been dealt with partially in works on the law of Libel and of Copyright, and incidentally in works treating of the law of Literature and of Printers, but so far as the authors are aware there is no book in which the whole law and nothing but the law relating to the Periodical Press is discussed.

And yet the tendency of recent legislation has unmistakably been to give the Newspaper a legal status peculiar to itself. It is the custom of writers on Constitutional Law to assert that in England, as distinguished from Continental States, there is no such thing as a Law of the Press, that written words stand in all cases on an equal footing before the law. Mr. Dicey, in his Vinerian Lectures at Oxford,* repeats and strongly emphasises this view. It will be clear, we think, from the following pages that whatever may have been the case in former times, this is true no longer. There is slowly growing up a distinct Law of the Press. Not to mention the provisions as to Registration and Imprint, a special law of Newspaper Libel has come into existence.

* 'The Law of the Constitution,' Third Edition, 225-253.

The distinction between a libel contained in a book or letter and one published in a Newspaper, which was first recognised in Lord Campbell's Act, has since then steadily deepened, until now the nature both of the wrong and of the remedy depends very largely on whether or not the libel appeared in a Newspaper.

These considerations have led the authors to believe that a work containing a concise but sufficient statement of the Law of the Press is wanted. Though this volume deals with many important branches of the law, still it has been found possible by rigidly excluding everything not affecting Newspapers to keep it within reasonable compass, and at the same time, it is hoped, to add to its clearness and utility. Already many able works exist on the general law of Copyright and of Libel; any claim to consideration which the present work has, is as a digest of the Law of the Press alone.

In conclusion two points may be referred to. In the first place, instead of citing, in support of each statement, a multitude of cases, half of which are antiquated or inapplicable, the authors have endeavoured to find in each instance one—if possible modern—case really illustrative of the law, and this case they have cited at sufficient length to enable readers to see its application to the rule laid down without referring to the Reports. In the second place they have given an outline of the principal Foreign Press Laws. Such a summary, they believe, has not appeared in English before, and they hope that it may prove interesting and suggestive, not merely to lawyers, but also to journalists and legislators.

CONTENTS.

	PAGE
PREFACE	v
TABLE OF CASES	xiii

INTRODUCTION.

The modern Press—Its peculiar difficulties—A libel in every issue—The agencies and syndicates—Moral and legal aspects—Power and responsibility—Blackstone on the Liberty of the Press—Two serious grievances—The speculator in damages—Mr. Soames's evidence—A remedy suggested—The Judge in Chambers—Security for costs—Public meetings—"For the public benefit"—Slander or Libel?—Suggestion by Mr. Flux—Modifications—The Institute of Journalists—Future reforms . . . xvii—xxvi

PART I.

REGISTRATION—ADVERTISEMENTS—COPYRIGHT— ENGAGEMENTS, &c.

CHAPTER I.

REGISTRATION.

Its object—The Act of 1881—What is a Newspaper?—Magazines, &c.—Time and place of registration—Change of ownership—Who should register—Misleading registration—Penalties—The common informer—Neglect to register—Copies must be preserved—"Imprint"—"Does not apply to Ireland"—A newspaper a "book"—Copies for the libraries . . . 1—11

CHAPTER II.

POSTAL REGULATIONS.

"Registered for transmission"—The Postmaster-General as censor of the Press—Postal definition of a Newspaper—Of a Supplement—Newspaper stamp abolished—Official regulations—Foreign postage—Eight days' limit—The Act of 1837—Unauthorised marks a misdemeanour—The Telegraph Act 12—15

CHAPTER III.

ADVERTISEMENTS.

May be libellous—"Legal" advertisements—Caution—Lottery advertisements—Severe penalties—May be sued for only by the law officers—Prize competitions—When illegal—Betting advertisements—The Act of 1874—Interpretation—Recovering stolen property—"No questions asked"—Accident insurance coupons—Liability to Stamp Duty—The Act of 1889—Indecent advertisements—Right to reject advertisements—Unlawful matter—Indemnity invalid—Corrupt practices at elections . . . 16—28

CHAPTER IV.

COPYRIGHT.

Increasing importance for Newspapers—No prospective copyright—Requisites for copyright—Originality—Is news copyright?—Telegrams?—Reports of speeches?—Common Law copyright—Unpublished matter—Limited publication—Letters to editor—Lectures—Act of 1836—Sermons—Statutory copyright—Queen Anne's Act—Perpetual copyright—A newspaper a "book," and so entitled to copyright—Must be registered—Newspaper proprietor's copyright in articles—Express agreement—Writer must be paid—Registration of a series—Of a single number—Limitation of proprietor's copyright—Separate publication—Reversion of copyright to writer—Reservation of copyright—Piracy by quotation—Reviews—Piracy of substance—Injunctions 29—59

CHAPTER V.

PROPRIETOR AND STAFF.

Property in the title of a Newspaper—No copyright in title—Infringement of title—Intent to deceive—The *Evening Post*—Nature of the property—Mortgage of a Newspaper—Joint ownership—Complications—*Herald* and *Chronicle*—*Times* and *Mail*—Contracts of proprietor with third parties—Contracts with staff—"Whole time" of Editor—Length of "notice"—Editor a yearly servant—Measure of damages—Position and duties—Scope of authority—Letters to Editor—Responsibility for manuscripts—Illegal matter—"Compulsory rectification" 60—78

PART II.

THE LAW OF LIBEL.

CHAPTER I.

LIBEL AS A CIVIL INJURY.

Difficulty of definition—Different senses—Blackstone—Draft Criminal Code—Lord Blackburn—New York Penal Code—Draft Civil Code—Must be in more or less permanent form—Must be “published”—Responsibility for publication—Proprietor—Printer—Publisher—Author—Libel by “interview”—Editor—Vendor—Sub-editor—Malice—Libel by a Corporation—Meaning of writer—Defamation—Certainty of application—Functions of Judge and Jury 79—101

CHAPTER II.

PRIVILEGE AND JUSTIFICATION.

Malice the gist of an action—Legal and actual malice—Absolute privilege—Partial privilege—Statements of fact—Parliamentary Reports—Judicial proceedings—“Publicly heard”—*Ex parte* applications—“Contemporaneously”—The Act of 1888—Public meetings—Public bodies, &c.—“Reasonable contradiction”—Official notices—Conditions of privilege—“Public concern” and “Public benefit”—“Fair and accurate”—Judge’s charge—*Macdougall v. Knight*—Libellous headings—Comments on matters of public interest—On a play—On a mayor—On public affairs—On a book—“Fair comment”—Imputation of improper motives—*Campbell v. Spottiswoode*—Private character—“Justification”—Truth a complete answer—Must be proved—Partial justification—Innuendo—Separable libel—Slander of title—Falsehood—Damage—Malice—*Scandalum magnatum* 102—140

CHAPTER III.

CIVIL PROCEDURE.

Jurisdiction—The County Court—“No visible means”—Consolidation of actions—Law of Libel Amendment Act—Particulars—Interrogatories—Name of writer—Steps taken to verify—Circulation of paper—*Parnell v. Walter*—Precautions taken by vendor—*Ridgeway v. W. H. Smith*—*Lord Hindlip v. Mudford*—Name of Author or Editor need not be disclosed—The defence—“Accord and satisfaction”—“Confession and Amends”—Apology—Payment into Court—Lord Campbell’s Act—*Res judicata*—Limitation—Damages—Aggravation—Mitigation—Previous action—Costs—Injunction to restrain 141—167

CHAPTER IV.

LIBEL AS A CRIMINAL OFFENCE.

Essential distinction from civil libel—A breach of the peace—Defamatory libels—Who is responsible?—Lord Campbell's Act—"Presumptively responsible"—Fox's Libel Act—A general verdict—No joint responsibility—Publication—Certainty of application—Libel on the dead—Privilege—Justification—"The greater the truth, the greater the libel"—"Truth and public benefit"—At the magisterial inquiry—Disorderly libels—No privilege—No justification—Truth no defence—Blasphemy—Obscene libel—Seditious libel—Treason—Treason felony—Contempt of Parliament—Contempt of Court—The "Superior Courts of Record"—Threatening to publish—Illegal practices at elections 168—186

CHAPTER V.

CRIMINAL PROCEDURE.

Criminal information—The Attorney-General *ex officio*—The Queen's Bench Division—*The Duke of Vallombrosa v. Labouchere*—Indictment—Consent of Judge at Chambers—Inquiry before magistrate—Summary dismissal—Summary conviction—Pleading to the indictment—Justification—Person charged may give evidence—Husband or wife—Punishment—Affidavits in mitigation—Obscene libels—Contempt 187—196

PART III.

FOREIGN PRESS LAWS.

Early printers—Ulrich Gering—Pope Alexander's Bull—The censorship—The beginnings of liberty—Denmark and Struensee—The American States—The censorship in France—The "Rights of Man"—Spain—Belgium—Greece—The Revolution of 1848—Germany—Austria—The New Codes in France and Germany—M. Barthe's bill—Liberty *v.* Order 197—204

FRANCE.

The Constitution of 1791—The law of 1819—The *Mur Guilloutet*—The *Procès de Tendance*—The *Loi Tinguay*—Compulsory Signature—The *écrivain de paille*—The law of 1881—Position of *Gérant*—Compulsory rectification—Prohibition of foreign papers—Incitement to crime—Defamation—Insult—*L'intention de nuire*—Officials—Libel on the dead—When truth is no defence—Reports forbidden—*Le huis clos*—Reports of public proceedings—"Successive and exclusive" responsibility—Procedure 204—213

GERMANY.

The law of 1874—Definitions— <i>Verantwortlicher Redacteur</i> — <i>Berichtigungszwang</i> —Foreign papers—War danger—Order of responsibility— <i>Dolus</i> —Negligence—Provisional seizure—The <i>objektive Verfahren</i> in Austria—A virtual censorship—General warrants—Freedom in Hungary—Suspensory power—Alsace Lorraine	213—219
---	---------

APPENDIX.

Table of Statutes	220
Statutes	221
INDEX	285



TABLE OF CASES.

		PAGE
A.		
Abrath v. North Eastern Railway Co.	93	
American Exchange in Europe, <i>In re</i> , American Exchange in Europe v. Gillig	86, 184	
Andrews v. Cox	20	
Annaly (Lord) v. The Trade Auxiliary Co.	121	
Archbold v. Sweet . . .	76	
B.		
Baily v. Tavlör	32	
Banning v. Perry . . .	158, 159	
Baxter v. Nurse	70	
Belt v. Lawes	145, 161	
Bembridge v. Latimer . .	136	
Bond v. Douglas	86	
Bonnard v. Perryman . .	167	
Booth and others v. Briscoe	158	
Borthwick v. <i>Evening Post</i>	62	
Brinsmead v. Harrison . .	158	
Bromage v. Prosser . . .	103	
Brown v. Cooke	43, 44	
— v. Croome	16	
Brunswick (Duke of) v. Harmer	84	
— v. Pepper	159	
Bryce v. Rusden	129	
Buxton v. James	40	
C.		
Caird v. Sime	35, 38	
Campbell v. Spottiswoode	123, 129	
Capital and Counties Bank v. Henty	81, 94, 95, 97, 100, 105	
Carter v. <i>Leeds Daily News</i> and Jackson	152	
Cary v. Kearsley	53	
Cate v. Devon and Exeter Constitutional Newspaper Co., Limited	47, 48	
Clark v. Molyneux	105	
Clarke v. Price	68	
Clarkson v. Lawson . . .	133	
Clay v. Yates	26	
Clement v. Lewis	120	
Colburn v. Patmore . . .	72	
Collingridge v. Emmott . .	47, 50	
Cooke v. Hughes	95, 137	
Correspondent Newspaper Co. v. Saunders	63	
Coulson v. Coulson . . .	166	
Cowan v. Milbourne . . .	27	
Cox v. Cox	75	
— v. Feeney	125	
— v. Land and Water Journal Co.	33, 40, 56	
— v. Lee	100	
Critchley v. Brown . . .	143	
Crookes v. Petter	50, 74	
Crown Bank, <i>In re</i>	183	
D.		
Daines v. Hartley	96	
Davis v. Miller & Fairley .	36	
— v. Shepstone	122, 130	
Davison v. Duncan . . .	108	
De Bensaude v. Conservative Newspaper Co.	163	
Dickens v. Lee	57	
Dicks v. Yates	41, 47, 61	
Dillon v. Balfour	104	
Donaldson v. Beckett . . .	39	
Duncan v. Thwaites . . .	110	
Duncombe v. Daniell . . .	163	

E.		J.	
	PAGE		PAGE
Emmens <i>v.</i> Pottle . . .	87, 89, 91	Jefferys <i>v.</i> Boosey . . .	35
Entick <i>v.</i> Carrington . . .	218	Johnston <i>v.</i> The Christian Million Publishing Co. . .	91
F.		K.	
Farrer <i>v.</i> Lowe & Co. and Medley	143	Kelly <i>v.</i> Hutton	65
Fleming <i>v.</i> Dollar	133, 155	— <i>v.</i> Morris	32, 55
Fleming <i>v.</i> Newton	121	— <i>v.</i> O'Malley	116, 118
Foss, <i>Ex parte</i>	7	L.	
Frescoe <i>v.</i> May	158	Lea <i>v.</i> Parker	142
G.		Leyman <i>v.</i> Latimer and others	135
Gibblett <i>v.</i> Read	63	Licensed Victuallers' News- paper Co. <i>v.</i> Bingham . . .	60
Gibson <i>v.</i> Evans	146	Liverpool Household Stores Association <i>v.</i> Smith. . .	165
Gilbert <i>v.</i> Boosey & Co. . . .	77	Low <i>v.</i> Routledge	47
Glassington <i>v.</i> Thwaites . . .	66, 67	Lumley <i>v.</i> Wagner	69
Griffin <i>v.</i> Howe	69	Lynch <i>v.</i> Knight and wife . .	162
H.		M.	
Haire <i>v.</i> Wilson	93	Macdougall <i>v.</i> Knight	109, 118, 120, 159
Harmer <i>v.</i> Westmacott	6	Macleod <i>v.</i> Wakley	127
Harris <i>v.</i> Petherick	164	MacNee <i>v.</i> Persian Invest- ment Corporation	19
Harrison <i>v.</i> Bevington	158	Malachy <i>v.</i> Soper & another .	138
— <i>v.</i> Pearce	92	Maple & Co. <i>v.</i> Army and Navy Stores	41
Hart <i>v.</i> Wall	98	Marks <i>v.</i> Conservative News- paper Co.	154
Heath <i>v.</i> Stokes	138	Martin <i>v.</i> Kennedy	158, 159
Henderson <i>v.</i> Maxwell	46	Mayhew <i>v.</i> Maxwell	51, 52
Hennessy <i>v.</i> Wright	145, 153	Mayor, &c., of Manchester <i>v.</i> Williams	93
Henwood <i>v.</i> Harrison	123	McGregor <i>v.</i> Thwaites	110
Hindlip (Lord) <i>v.</i> Mudford and others	150	McPherson <i>v.</i> Daniels	132
Hogg <i>v.</i> Kirby	36, 73	Merivale <i>v.</i> Carson	123, 127, 128
Holcroft <i>v.</i> Barber & Watson .	71	Merryweather <i>v.</i> Nixian . . .	27
— <i>v.</i> Huggins and another	68	Metropolitan Music Hall <i>v.</i> Lake	184
Hollings <i>v.</i> Robinson	69	Millar <i>v.</i> Taylor	39
Howard <i>v.</i> Galignani	69	Mitchell <i>v.</i> <i>Liverpool Daily Mail</i>	69
Hunt <i>v.</i> Clarke, <i>In re</i> O'Malley	183	Morris <i>v.</i> Wright	55
Hunter <i>v.</i> Henchmann & Darken	69	Munster <i>v.</i> Cox	159
— <i>v.</i> Sharpe	126		
Hutton <i>v.</i> Beeton	63		
I.			
Ingram <i>v.</i> Lawson	162		

TABLE OF CASES.

XV

N.	PAGE
Nicols <i>v.</i> Pitman . . .	38
Nottage <i>v.</i> Jackson . . .	47

O.

O'Brien, <i>Ex parte</i> . . .	177, 191
— <i>v.</i> Salisbury . . .	135
O'Shea <i>v.</i> O'Shea & Parnell	195

P.

Pankhurst <i>v.</i> Sowler . . .	117
Parmiter <i>v.</i> Coupland . . .	124
Parnell <i>v.</i> Wright	146, 147, 153, 162
Pearce, <i>In re</i> . . .	25
Percival (Lord and Lady) <i>v.</i> Phipps	36
Peters <i>v.</i> Bradlaugh . . .	130
Platt <i>v.</i> Walter . . .	30, 67
Praed <i>v.</i> Graham . . .	161
Prince Albert <i>v.</i> Strange . . .	35
Purcell <i>v.</i> Sowler . . .	125

Q.

Quartz Hill Consolidated Gold Mining Co. <i>v.</i> Beall	165
--	-----

R.

Ravenhill <i>v.</i> Upcott . . .	139
Reg. <i>v.</i> Allison . . .	190
— <i>v.</i> Bradlaugh . . .	172
— <i>v.</i> Coghlan . . .	185
— <i>v.</i> Cooper . . .	88
— <i>v.</i> Dalziel . . .	18
— <i>v.</i> Gray . . .	110
— <i>v.</i> Hicklin . . .	178, 179
— <i>v.</i> Hoggans . . .	193
— <i>v.</i> Holbrook & others	170, 172
— <i>v.</i> Labouchere	134, 174, 187
— <i>v.</i> Most . . .	182
— <i>v.</i> Ramsey & Foote	171, 178
— <i>v.</i> Sullivan . . .	181
— <i>v.</i> Topham . . .	174
— <i>v.</i> Ward . . .	185
Rex <i>v.</i> Critchley . . .	174
— <i>v.</i> Wright. . . .	117
Richardson <i>v.</i> Gilbert . . .	44
Ridgway <i>v.</i> Smith . . .	149
Riordan <i>v.</i> Wilcox & others	125
Risk Allah Bey <i>v.</i> Johnstone . . .	115, 157

	PAGE
Roach <i>v.</i> Garvan, <i>Re</i> Read & Hugginson . . .	182
Russell & another <i>v.</i> Webster	99

S.

Sammons <i>v.</i> Bailey . . .	154
Saunders <i>v.</i> Mills . . .	163
Saxby <i>v.</i> Easterbrook . . .	165
S. <i>v.</i> Butterworth . . .	131
Shackell <i>v.</i> Rosier . . .	28
Shepherd <i>v.</i> Whitaker . . .	92
Smith <i>v.</i> Johnson . . .	51
Steele <i>v.</i> Brannan . . .	179
Stockdale <i>v.</i> Onwhyn . . .	34
Strauss <i>v.</i> Francis . . .	126
Sweet <i>v.</i> Benning . . .	31, 42

T.

Taylor <i>v.</i> Hawkins . . .	103
Tidman <i>v.</i> Ainslie . . .	91
Trade Auxiliary Co. <i>v.</i> Middlesborough and District Tradesmen's Protection Assoc. . .	31, 32, 43, 45, 54, 56
Tuck & Sons <i>v.</i> Priester . . .	45

U.

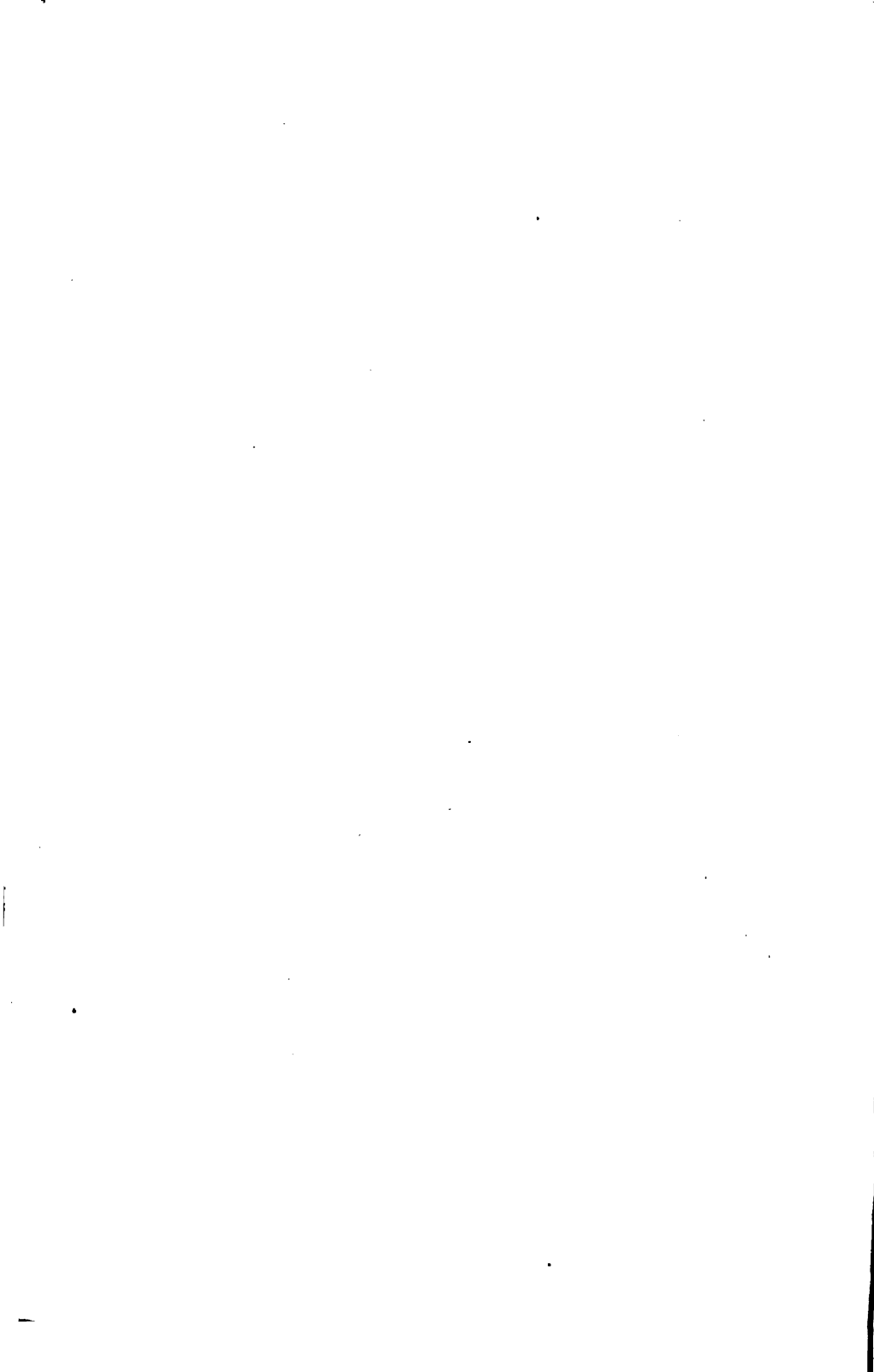
Usill <i>v.</i> Hales . . .	110
-----------------------------	-----

V.

Venables <i>v.</i> Fitt . . .	117
-------------------------------	-----

W.

Walter <i>v.</i> Howe . . .	40, 43
Ward <i>v.</i> Beeton . . .	64
Wason <i>v.</i> Walter	103, 106, 125
Watts <i>v.</i> Fraser & Moyes	84, 86
Weldon <i>v.</i> Johnston . . .	124, 130
Western Counties Manure Co. <i>v.</i> Lawes Chemical Manure Co. . . .	139
Whitney <i>v.</i> Moignard . . .	162
Williams <i>v.</i> Byrne . . .	70
— <i>v.</i> Smith . . .	97, 121
Willmet <i>v.</i> Harmer . . .	134
Wilton <i>v.</i> Brignell . . .	146
Wright <i>v.</i> Tallis . . .	34
Wyatt <i>v.</i> Barnard . . .	32



INTRODUCTION.

ALTHOUGH the newspaper editor has long ago been freed from most of the pains and penalties that once surrounded him, his position to-day involves difficulties and responsibilities of which the men of old knew nothing. The editors of the "Courants," and "Intelligencers," and "Registers," of last century suffered many things at the hands of the law, but the world in which they lived, and about which they wrote, was a little one, and they knew their ground. Political writing—for the Opposition—might be dangerous work, but those who engaged in it did so with full knowledge of the risks. If they preferred a safe obscurity, they could produce a harmless news-sheet on the lines of Figaro's *Journal Inutile* and fear nothing from the King's Bench. With the modern newspaper all that is changed. Opinion on every subject is absolutely free; the centre of danger has shifted to the news columns. A competent authority has expressed the opinion that there is not a single newspaper published in the three kingdoms that does not in every one of its issues contravene the law of libel strictly construed. The offence may lurk in a message from the Antipodes, or in a report of the proceedings at a police court, or a village meeting. A shipwreck in the Black Sea, a crisis at the Cape, a bank failure at Shanghai, all these have before now wrought trouble in Fleet Street. The world

of the daily newspaper has grown wider, and with it the difficulties and dangers of the editor. The verification of the news that pours into an office from all quarters of the globe in the small hours of the morning is of course impossible, and the editor finds himself responsible for the accuracy, judgment, and *bona fides*, not merely of his own correspondents, but of hundreds of others of whom he knows nothing, but with whom he is put in temporary contact by the ever-spreading agencies, associations, and syndicates which play such a large part in modern news purveying.

This alteration in the circumstances of the newspaper has produced a corresponding change in the moral aspect of newspaper libel. That which was once in nearly every case a deliberate and intentional offence, is now usually an accidental and involuntary wrong. The growing perception of this has led to the enactment of the various statutes which have recently been passed to protect those responsible for the publication of newspapers from the harsher penalties of the law of libel. These have made the criminal law on the subject fair and adequate, but when we turn to the civil law we find that in spite of the acknowledged fact that the moral character of newspaper libel is, in most cases, essentially different from what it was, its legal consequences remain practically unaltered. And the controversy which has long gone on turns entirely on the question whether it is expedient in the public interest that their moral and legal aspects should be more closely approximated.

This is a problem sufficiently difficult of solution, and it is not rendered less difficult by the exaggerations of partisans. Some writers put forward a claim, which under the name of "Liberty of the Press," would virtually

mean the creation of a privileged class of journalists who should be freed from responsibility for the consequences of their own actions. On the other hand, those who have not realised the complete change of circumstances which we have just pointed out, do not hesitate to brand a Bill such as that passed in 1888, as a "Libeller's Relief Bill." We have to clear our minds of cant of this sort on both sides. Any one familiar with the management of a daily newspaper knows that in the vast majority of cases—cases of which the public in general never hear—the wrong done is of the class which we have already described as accidental and involuntary. It is, however, none the less a wrong, and one for which the wrongdoer is bound to make reparation. Those who believe most in the power and "manifest destiny" of the Press should be the first to recognise this. They cannot divorce responsibility from power. Fifty years ago Mr. Disraeli spoke of the Press as in a great degree absorbing in itself "the duties of the Sovereign, the Priest, and Parliament," and the scope and influence of the newspaper has certainly not diminished since "Coningsby" was written. But in proportion to the growth of the power of the Press, its capacity for inflicting injury has increased. Just as an inaccurate telegram from China may make a London newspaper liable to an action and heavy damages, so an unfounded or malicious statement printed in a Fleet Street court may blast a man's credit or character in the remotest corners of the earth. And with every extension of the sphere of newspaper activity comes an increase of the danger of such statements being unwittingly published, and of the temptation to publish them maliciously.

It may be pointed out too that the most complete

responsibility for all press offences is not inconsistent with liberty. On this, as on so many other matters, it will be found difficult to improve on the words of Blackstone. "The Liberty of the Press," he says in the fourth book of the Commentaries, "consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the Press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity."

It is clear, then, that the newspaper proprietor must remain responsible for everything that appears in his newspaper, and if any third party is injured thereby he must compensate him for the injury. That, however, is no reason why he and others should continue subject to serious grievances for which it is possible to provide a remedy. These grievances may be classed under two heads. The first, and perhaps the most annoying, is the proprietor's peculiar exposure to blackmail at the hands of the speculator in damages. The second is his responsibility in damages for publishing statements for which the original speaker is either not legally liable at all, or, if liable, is never proceeded against.

The existence of the first of these evils will not be questioned by anyone in the slightest degree acquainted with the subject. Speculating in damages has become almost a profession. A certain class of discreditable hangers-on of the legal profession devote a large part of their abundant leisure to searching out those inevitable slips which occur in every newspaper, and, on finding them, urge the persons who may be technically supposed

to be injured to bring actions with a view to securing an offer of money to stop proceedings, or, at any rate, obtaining something in the way of costs. The late head of a firm of solicitors, which has had a very wide experience in defending actions for libels in newspapers, testified before the Parliamentary Committee of 1879, that "eight out of every ten of the actions for libel against newspapers are brought by persons who have no real grievance and no means of paying costs if they lose, simply in the hope of extorting a compromise. No amount of editorial care can be an effectual safeguard against such actions."*

This surely is an evil which should be remedied if it admits of remedy. There is, it is true, a provision in the County Courts Act, by which where a plaintiff has no visible means of paying costs, and the case appears to be one not fit to be tried in the High Court, the defendant can obtain an order from a judge that in default of the defendant giving security for costs the action shall be remitted for trial to the County Court. But this concession has proved of little service, owing partly to the fact that the County Court is not a satisfactory tribunal for the trial of libel actions, and partly because the order does little to put an end to the worry and expense of litigation. It is submitted, however, that the difficulty might readily be overcome by the adoption in actions for damages of a procedure somewhat akin to that which has worked so well in the case of criminal proceedings.

The procedure which we venture to suggest is as follows:—In an action for libel against the proprietor or other person responsible for the publication of a newspaper, the defendant should, after defence delivered, be

* Evidence of Mr. F. L. Soames, 1477, 1516.

entitled to issue a summons to the plaintiff to show cause why he should not give security for costs. The summons would be heard before the judge in Chambers, when the libel and pleadings should be placed before him and both parties heard. The judge, if he was satisfied that the alleged libel was no libel at law, or was of a trivial nature and not calculated to damage the plaintiff, and that the defendant had offered such reparation as appeared sufficient, might order a stay of proceedings until security for costs to a reasonable amount was given. If the defendant had tendered compensation, the order might also be that in case the jury awarded no greater amount the defendant should be entitled to his costs, though perhaps Lord Campbell's Act renders such a provision unnecessary. There should be no appeal, or, at any rate, none beyond the Divisional Court, except by leave.

The usual objection to requiring security for costs from a plaintiff, namely, that it presses hardly upon a poor litigant whose character is of as much value to him as is that of any richer man, would have no force under the circumstances suggested. In cases where the Court is satisfied either that no wrong has been done, or, if any wrong has been done, that sufficient reparation has been offered by the wrongdoer, there can be no hardship in requiring a plaintiff who disregards that opinion to give security for the costs for which he will most probably by proceeding further make himself liable. Moreover, the enactment would not apply to cases where real injury had been suffered, but only to those where the injury is either non-existent, or technical, or trivial in character. There are in fact only two grounds on which such a change in the law could reasonably be opposed. The

first is that the judge might display partiality. It is only necessary to remind those familiar with such cases that if any leaning is displayed by learned judges in libel cases it certainly is not to the favour of defendants. The second ground is, that others besides newspaper proprietors are exposed to the attentions of the speculator in damages, notably, railway and other public companies. This is undoubtedly true, but the fact that an evil is very prevalent is no good reason why it should not where possible be alleviated.

The second grievance of those responsible for the publication of newspapers is their liability to actions for publishing statements for which the original utterers either are not liable at all or are not made liable. For example, a public meeting of some importance is held. One of the speakers, a responsible man whose words have weight with such an audience, makes charges against another person. The reporter's copy arrives just in time to be set up for the next morning's paper, yet the editor is called on to examine and decide on the spur of the moment whether the charges publicly and deliberately made are, or are not, "of public concern," and "for the public benefit." If he decides that the risk and responsibility of suppressing these charges, and thereby perhaps defeating the ends of justice, is greater than that of publishing, the newspaper proprietor is probably served with a writ, and has the expense and trouble of defending the action, while the original speaker, on whom surely the primary responsibility should rest, escapes scot free, either because he is not legally liable—there being no proof of special damage—or because the newspaper proprietor is a better mark for damages.

The law on this subject has, it is true, been consider-

ably modified by the provisions of the Law of Libel Amendment Act, 1888, but it is still open to improvement, and the direction which the improvement should take is, we submit, not in freeing the newspaper proprietor from liability, but in making the original speaker liable. We do not for a moment suggest that the newspaper which publishes an unfounded statement not privileged by the law as it stands, is entirely blameless; such a rule would be liable to gross abuse. But there is an immense difference between holding a person not entirely blameless, and making him alone blameworthy, which in this matter is the position of the newspaper proprietor under the present law.

Is there any reason why the person who under such circumstances originated the slander should not be made primarily, or, at any rate, partially responsible for it? This might be accomplished in various ways. The most practical seems to lie in the direction pointed out by Mr. W. Flux, solicitor, in his evidence before the committee of 1879. "I think," he said (Q. 1094), "that, probably, the most expedient thing would be to provide that in all cases where newspaper proprietors are proceeded against in respect of slander uttered at those meetings, the speaker of the slander shall be joined in the action, either originally or under the modern procedure, which allows a person entitled to an indemnity to join the indemnified in the action, and that whilst the newspaper proprietor shall for his part remain responsible to the slandered person, he shall be entitled to a remedy over-against the speaker unless there has been collusion between them, and that a fair report of spoken words shall not be libel, but shall remain as spoken, that is as slander."

With certain modifications, we think Mr. Flux's suggestion supplies a just solution of the difficulty. In the first place we see no reason why a slanderous speech when reported should not be treated as what it is, namely, a libel. In the second place, we think that the speaker should only be joined when it can be shown to the satisfaction of the Court that he was aware when he spoke that there were reporters present for the purpose of reporting the speeches. In the third place we suggest that the jury should have power to apportion the damages as between the speaker and the newspaper proprietor, *i.e.*, while both would be liable for the whole damages awarded to the plaintiff, as between themselves each would be liable only for that part of them apportioned to him by the jury.

No doubt there are theoretical objections to this suggestion, but most of these have already been disregarded in recent legislation. The objection that we should in such a case be making a man who only intends to slander responsible for libel does not in our opinion really arise. All that the suggested reform would do would be to put a man who utters a slander which he knows will be reported in the position of one who incites another to report a slander. The latter is, as the law stands (*Reg. v. Cooper*, p. 88), liable in libel.

As will be seen from the various chapters of this work, the Law of the Press is in many respects sadly lacking in clearness and precision, and the legislation of 1881 and 1888 has on some points made matters worse rather than better. The Press Codes that have come into force in France and Germany, and of which a summary is given at the end of the book, may be taken as specimens of what can be done with very unpromising

materials in the way of arranging and simplifying the law. When the recently incorporated Institute of Journalists has acquired strength and experience enough, it will, we trust, take steps to ensure at any rate the passing of a consistent and comprehensive Libel and Registration Act. For some such attempt the present writers have made a modest endeavour to clear the way. 'Their handbook will, they hope, be found comprehensible, not merely by lawyers, but by journalists, for they are inclined to agree with Sir Frederick Pollock in the belief that "it is possible to put within every man's reach, not indeed a full knowledge, but a knowledge, clear, sound, and exact, as far as it goes, of the laws he lives under and has to do with in his own daily business." If the authors have, in their own department, succeeded in approaching even within a measurable distance of that goal, they will have attained their object.

LAW OF THE PRESS.

PART I.

CHAPTER I.

REGISTRATION.

IN order that a newspaper may be rendered directly amenable, civilly and criminally, for any violation of the law, it is requisite first of all to provide a ready method of ascertaining and proving who is responsible for its publication. Various Acts have been passed from time to time with the object of fixing responsibility by means of registration, imprints, and so forth, and as any infringement of these enactments renders the proprietors, publishers, or printers, as the case may be, liable to heavy penalties, it is necessary to be thoroughly acquainted with their provisions.

REGISTRATION.—The law with regard to registration now depends on the Newspaper Libel and Registration Act of 1881. For twelve years absolute anarchy had prevailed in this matter, the old Registration Act of 1798 having been repealed by the Act of 1869, and no substitute provided. In consequence of the state of affairs disclosed before the Select Committee on the Law of Libel which sat in 1879, charged, among other things,

44 & 45
Vict. c. 60.
38 Geo. 3,
c. 78.
32 & 33
Vict. c. 24.

“to inquire into the means of rendering proprietors and publishers of newspapers and journals responsible civilly and criminally for libels contained therein,” the Act of 1881 was passed. This Act extends to Ireland, but not to Scotland, and it does not, so far as registration is concerned, apply to newspapers owned by joint stock companies.

Sect. 1. DEFINITION OF “NEWSPAPER.”—For the purposes of the Act a newspaper is defined as “any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days.” And further, “any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.”

Two things are to be carefully noted about these two definitions. In the first place, a large number of magazines, story-papers, papers composed of scraps of miscellaneous reading, and the like, are not “newspapers” under the Libel and Registration Act, 1881, or the Law of Libel Amendment Act, 1888, no matter at what intervals they appear, and are therefore under no obligation to register under the Act, nor can they claim the protection afforded by the Act; and in the second place, many purely business publications, such as a tradesman’s, stock-broker’s, or publisher’s circular, or a theatrical programme, or bill of the play, containing “only or principally advertisements,” might be held to be “newspapers,” and subject to registration and to all the penalties for omission or evasion of that duty, if they are “printed in

order to be dispersed at intervals not exceeding twenty-six days."

MODE OF REGISTRATION.—The registration of newspapers is placed by the Act under the direction of the Board of Trade, the "registrar" being defined as, in Sect. 1. England, "the registrar for the time being of joint stock companies," and in Ireland, "the assistant-registrar for the time being of joint stock companies," or such other person in either country as the Board of Trade may for the time being appoint. At present the place of registration for England is Somerset House, in London (Room 7), and for Ireland the Dublin Custom House.

To put the requirements of the Act into something like order, it is necessary to turn first to sect. 9, which is as follows:—

It shall be the duty of the printers and publishers for Sect. 9. the time being of every newspaper to make or cause to be made to the Registry Office, on or before the thirty-first of July, 1881, and thereafter annually in the month of July in every year, a return of the following particulars—that is to say;—

- (a) The title of a newspaper;
- (b) The names of all the proprietors of such newspaper, together with their respective occupations, places of business (if any), and places of residence.

The most serious defect in this very clumsily-worded section is that no provision is made in it for the immediate registration of a newspaper whose first number appears in any other month than July. A newspaper started in August or September may be regularly published for nearly a year before any necessity for registration arises under the Act. This is an especially serious omission in the case of newspapers published in Ireland, since the imprint and similar Acts do not extend

to that country. So far from being remedied by other provisions of the Act, this defect is only aggravated—indeed, the 11th section seems specially designed for the purpose of enabling newspaper proprietors to avoid the Act. That section runs as follows:—

Sect. 11. Any party to a transfer or transmission or dealing with any share of or interest in any newspaper, whereby any person ceases to be a proprietor, or any new proprietor is introduced, may at any time make or cause to be made at the Registry Office a return according to schedule B, hereunto annexed.

See Appendix.

It will be observed that, under this enactment, in the event of a change in the ownership of a newspaper, the registration of the transaction is not compulsory on either the old proprietor or the new one. The effect of this is to a large extent to render the whole system of registration useless. Though in ordinary cases a regard for their own interests will doubtlessly induce both old and new proprietor to see that the transfer is duly registered, yet in some cases ulterior considerations may lead them to neglect to do so. In this case the register is misleading. The victim of a libel may, after he has brought his action or proceeded with his indictment, and incurred heavy expense, find himself defeated by the registered proprietor proving that before the date of the libel he had ceased to be proprietor. This contingency may be partially guarded against in a civil action by means of interrogatories, but in criminal proceedings there is no such protection.*

* As will be seen, the French law of 1881, which was discussed almost *pari passu* with the English Act, provides for this difficulty in a couple of lines. "Toute mutation dans les conditions ci-dessus énumérées sera déclarée dans les cinq jours qui suivront." Loi du 29 Juillet, 1881, sur la Liberté de la Presse. Article 7.

A further difference between sects. 9 and 11 may be referred to. The duty of making the compulsory registration required by sect. 9 is thrown upon the printers and publishers for the time being of the newspaper. Sect. 11 in the case of a change of ownership leaves the option of registering it to "any party to the transfer or transmission," *i.e.*, to the old and the new proprietors.

By sect. 10 a month's grace is allowed in making the return required by sect. 9. If at the expiration of that period there is still default, "then each printer and publisher of such paper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds." Sect. 10.

MISLEADING REGISTRATION.—The making of a false or misleading return is specially provided against by sect. 12, which subjects to a penalty not exceeding one hundred pounds any person who shall knowingly make or cause to be made a return containing the name, as proprietor, of any one who is not a proprietor, or misrepresenting or omitting any of the particulars required to be given, whereby such return shall be misleading. This, except in cases coming within sect. 11, primarily affects the "printer and publisher," on whom the responsibility of making the return is thrown, but the same penalty is imposed on a proprietor who shall knowingly permit any such incomplete or misleading return to be made. Sect. 12.

This very stringent section deserves more attention than it appears to have received, for there is reason to believe that some easy-going proprietors have regarded registration under the Act of 1881 as simply another form of "imprint," and have permitted the printer or other convenient person to enter his name on the return. In all such cases the danger of a heavy penalty is

incurred, and as this penalty may be sued for by a "common informer" without the intervention of the Attorney-General, the risk is no imaginary one.

A still more serious consideration, however, is this: a proprietor who makes or is party to making a false return for the purpose of avoiding the provisions of the Act incurs the risk of losing thereby the ownership of his newspaper. If a proprietor deliberately, and for the purpose of defeating the Act, permits another person to be returned as owner the law will treat such a return as a transfer of the property in the newspaper to that person whom it will regard as the real owner, and it will not assist any party to the false return to reclaim and recover back his property. This appears from the case of *Harmer v. Westmacott*, a decision indeed upon the old Registration Act, but the principle of which seems to apply equally well to the provisions of the Newspaper Libel and Registration Act.

6 Sim. 284.
(1833.)

The case of *Harmer v. Westmacott* was as follows: One Richards was the owner of a newspaper called the *Age*. Being in the King's Bench prison for debt, he asked one Bowden, a journeyman printer, to permit himself to be registered as proprietor. To this Bowden consented, and made and delivered affidavits to that effect to the Commissioners of Stamps, as required by the old Act. Afterwards Bowden, with Richards' consent, sold a moiety of the paper to Westmacott; and later on, without his consent, sold the rest to the same person. On Richards' taking advantage of the Insolvents' Relief Act, the assignees in bankruptcy filed a bill to have the sale of the *Age* set aside on the ground that the sale of the first moiety was fraudulent and of the second moiety void, since Bowden had no interest in the newspaper nor any authority from Richards to sell. The Court held that the assignee could not recover. The agreement between Richards and Bowden to register Bowden as sole proprietor was a conspiracy to defeat the policy of the law, and no

relief can be given in a court of justice to those who shew that they thought proper to disappoint the policy of the law, and to do that which the policy of the law requires should not be done.

NEGLECT TO REGISTER.—As has already been pointed out, the purchaser of a newspaper is not bound to register his proprietorship till the August following the purchase. He should, however, for his own protection, lose no time in seeing to the removal of the name of the outgoing proprietor and the insertion of his own, since otherwise his property in the paper may be endangered. For instance, in the event of the bankruptcy of the registered owner, it would appear that the newspaper—or rather the right to publish the newspaper, bearing the registered name—will be considered goods in the reputed ownership of the bankrupt within the Bankruptcy Act, and will consequently vest in the trustee in bankruptcy for the benefit of the creditors generally.

46 & 47
Vict. c. 52.

The case of *Ex parte Foss*, though decided on the old Registration Act, now repealed, is in point. Mr. C. Baldwin was proprietor of the *Morning Herald*, the *Standard*, and the *St. James's Chronicle*. He assigned to one Foss, on mortgage for £7000, the plant, &c., of these newspapers in and about the premises in Shoe Lane, and also the newspapers themselves and the copyright thereof. Subsequently he granted a second mortgage to one E. Baldwin. Neither Foss nor E. Baldwin had his name entered in the Newspaper Register. Some time later an unsecured creditor levied an execution on the goods at Shoe Lane. The mortgagees gave the sheriff notice to withdraw, which the sheriff declined to do. The next day C. Baldwin was adjudicated bankrupt on his own declaration. The Court held that, at the time the declaration was filed, the plant, &c., was not in the possession of the bankrupt, but of the sheriff, who held for the trustees; but as to the right to publish the newspapers, this was not

2 De G. &
J. 230.
(1858.)

tangible, and could not be seized by the sheriff. It was in the order, disposition, and reputed ownership of the bankrupt, with the consent of the true owners, since he was registered as "sole owner" under the Registration Act.

Sect. 1. The word "proprietor," as defined in the first section of the Act, includes "as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person."

Sect. 7. REPRESENTATIVE PROPRIETORS.—As a rule, then, all persons interested in the ownership of a newspaper must be registered. Under certain circumstances, however, advantage may be taken of sect. 7, which provides that where, "in the opinion of the Board of Trade," individual registration may be inconvenient, "owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances," the name of one or more persons may be entered as "Representative Proprietors."

Where it is desired to take advantage of this provision it is necessary to send to the registrar a statement "setting forth the circumstances which render it inconvenient to register the names of all the proprietors, and giving such information as will shew that the proposed representatives are well able to meet any claims that may arise for libel or otherwise in connection with the management of the paper."

BOARD OF TRADE REGULATIONS.—A special fee of 20s. is required on registering for the first time a representa-

tive proprietor, 10s. being the fee for an ordinary first registration, and 5s. for each annual renewal of registration. The prescribed forms can be had, either stamped with the requisite fee stamps or unstamped, on application to the Registrar at Somerset House or the Dublin Custom House. When the same proprietor owns more than one newspaper a separate registration and fee are required for each.

Two other provisions must be mentioned. By sect. 15 Sect. 15. a certified copy of an entry in, or extract from, the register of newspapers shall be conclusive evidence of the contents of the register so far as the same appears in such copy, and shall, in all proceedings, civil or criminal, be *primâ facie* evidence of all the matters appearing in it until the contrary be proved. By sect. 16 Sect. 16. all penalties under the Act may be recovered before a Court of summary jurisdiction.

PRESERVING COPIES AND IMPRINT.

Registration affects proprietors only. The printer and publisher of a newspaper are, however, equally liable for any illegal matter contained in it, and various Acts have been passed to ensure that they shall not escape.

PRESERVING COPIES.—The Act of 1869 already referred to, as consolidating and amending the law relating especially to printers, swept away a host of vexatious and useless restrictions, retaining, however, two regulations applying to newspapers, which must be strictly observed by the parties concerned if penalties are to be avoided. The first of these, which dates from the last century, directs in sect. 29, “Every person who shall print any paper for hire, reward, gain, or profit,” carefully to preserve at least 32 & 33
Vict. c. 24.

39 Geo. 3,
c. 79.

one copy for a period of six months after printing, and on it he "shall write or cause to be written or printed, in fair and legible characters," the name and address of the person employing him. The penalty for neglecting this duty, or for refusing to produce the copy to "any justice of the peace" who shall require to see it, is £20. This sum is fixed and cannot be reduced, and (sect. 34) the penalty must be sued for within three months of its being incurred. 9 & 10 Vict. c. 33, however, protects printers from vexatious prosecution by requiring that the action must be taken by the Attorney-General or Solicitor-General, or in Scotland by the Lord Advocate.

9 & 10
Vict. c. 33.

2 & 3 Vict.
c. 12.

Sect. 2.

Sect. 4.

IMPRINT.—The second regulation is that enforcing what is called the "imprint." This is provided for by 2 & 3 Vict. c. 12, which applies, with certain exceptions, to all printed matter. All that concerns newspapers may be summarised by saying that the printer is bound under a penalty of not more than £5 *for every copy* to print in legible characters his name and address on the "first or last leaf" of the paper. Every person "who shall publish or disperse, or assist in publishing or dispersing," any paper neglecting this, is liable to the same penalty as the printer. This penalty again can only be sued for by the Attorney-General or Solicitor-General, or in Scotland by the Lord Advocate.

23 & 24
Geo. 3,
c. 28.

IRELAND.—Neither this enactment nor the preceding one—that relating to the preservation of copies—extends to Ireland. Before the Union an Act was passed containing similar provisions to those in force in England. This was repealed and re-enacted by 6 & 7 Will. 4, c. 76, which Act, so far as Ireland is concerned, was entirely repealed, save as to sect. 19, by 32 & 33 Vict. c. 24.

The effect of this, combined with sect. 18 of the Newspaper Libel and Registration Act, 1881, is that in Ireland a newspaper if owned by a company would appear to have the power of placing itself outside the law. In the case of companies, as we have seen, the Libel and Registration Act does not apply; and as there is no obligation, as in England, to print on each copy the name of the printer, or to preserve a signed copy, it becomes practically impossible to discover who is responsible. The only chance of the aggrieved party lies in having recourse to interrogatories under 6 & 7 Will. 4, c. 76, s. 19.

See 32 & 33
Vict. c. 24,
sched. II.

COPIES TO BE DELIVERED.—It may be mentioned that a newspaper is a “book” within the meaning of the Copyright Act of 1842—which will be fully discussed later on—so that it would seem that the “publisher” is bound to deliver a copy of every issue at the British Museum in London, and “if demanded,” copies must be delivered at Stationers’ Hall for the Bodleian Library at Oxford, the University Library at Cambridge, the Advocates’ Library at Edinburgh, and the Library of Trinity College, Dublin. The penalty for non-compliance with the Act in this respect is “£5 and the value of the copy not delivered.”

5 & 6 Vict.
c. 45.

CHAPTER II.

POSTAL REGULATIONS.

33 & 34 POST OFFICE ACT, 1870.—By the Post Office Act, 1870,
Vict. c. 79. the “proprietor or printer” of a newspaper which is
intended for transmission through the Post Office is
Sect. 7. required to “register it at the General Post Office in
London at such time in each year, and in such form and
with such particulars as the Postmaster-General from
time to time directs, paying on each registration such
fee, not exceeding 5s., as the Postmaster-General with
the approval of the Treasury from time to time directs.”

Under the authority of this Act successive Post-
masters-General have succeeded in drawing up a highly
elaborate and complicated series of rules, which are
enforced in a somewhat arbitrary manner, but from
which there is no appeal, except to the Treasury—
Sect. 7. an appeal from Pilate to Herod. Sect. 7 of the Act,
from which we have already quoted, goes on to say:
“The Postmaster-General may from time to time revise
the register and remove therefrom any publication not
being a newspaper. The decision of the Postmaster-
General on the admission to or removal from the register
of a publication shall be final, save that the Treasury
may if they think fit, on the application of any person
interested, reverse or modify the decision.”

DEFINITION OF A NEWSPAPER.—For postal purposes a

newspaper is defined by the Post Office Act, 1870, as amended by 44 & 45 Vict. c. 19, as follows:—

33 & 34
Vict. c. 79
44 & 45
Vict. c. 19

The publication must consist wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements.

It must be printed and published in the United Kingdom; and in numbers at intervals of not more than seven days.

The full title and date of publication must be printed at the top of the first page, and the whole or part of the title, and the date, at the top of every subsequent page. This regulation applies also to "Tables of Contents," and "Indexes."

A supplement must consist wholly or in great part of matter like that of a newspaper, or of advertisements, printed on paper, unstitched; or wholly or in part of engravings, prints, or lithographs illustrative of articles in the paper. It must in every case be published with the paper, and have its title and date printed at the top of every page; or, if it consists of engravings, prints, or lithographs, at the top of every sheet or side.

GENERAL REGULATIONS.—Every newspaper posted with or without supplement must, for inland circulation, be prepaid with a halfpenny postage stamp. The following regulations must be observed:—

The title of every newspaper should be exposed to view.

All unregistered newspapers are treated as book packets, and are subject to the rates and regulations of the Book Post. If they are sent in a packet with one or more registered newspapers, the whole should be prepaid at the book rate.

A newspaper, if posted in a cover, must have such cover open at both ends, so as to admit of the paper being easily withdrawn for examination. The cover must not bear anything besides the title of the newspaper, and the name and address of the sender and of the addressee.

A registered newspaper or packet of registered newspapers must not contain any enclosure except the relative

supplement or supplements, and no newspaper must bear on any part of it words of the nature of a letter. A packet of registered newspapers must not weigh above 14 lb., or exceed two feet in length, one foot in width, or one in depth.

Any registered newspaper, or packet of registered newspapers in the case of which any of the five last-mentioned rules is infringed, is chargeable, if under 8 oz. in weight, as a letter packet; and, if over 8 oz., it is transferred to the Parcel Post and charged a fine of 1*d.* in addition to any deficient parcel postage.

A packet containing two or more registered newspapers is not chargeable with a higher rate than would be chargeable on a book packet of the same weight. For each transmission a fresh postage must be paid.

A newspaper or a packet of newspapers, posted unpaid, or insufficiently paid, is treated as an unpaid, or insufficiently paid, book packet of the same weight.

FOREIGN POSTAGE. — With regard to newspapers posted for foreign countries and the colonies, the above regulations as to prepayment, folding, and enclosures also apply, but in other respects there are variations.

The conditions of registration for transmission abroad are the same as those for inland transmission; excepting that for foreign transmission a newspaper may be published at intervals of thirty-one days. All publications registered for transmission abroad must be posted within eight days from the day of publication, including that day; and any newspaper posted more than eight days after the date of publication, as well as any unregistered publication, must be prepaid at the book rate of postage. The collected numbers issued during the month of a weekly or fortnightly publication are not allowed to pass as a monthly publication.

There must be no writing or other mark on a newspaper sent abroad but the name and address of the person to whom it is sent; nor anything on the cover but such name and address, the printed title of the publication, the printed name and address of the publisher or vendor who sends it,

and words indicating the date on which the subscription to the newspaper will end.

No packet of newspapers for countries of the Postal Union may exceed eighteen inches in length or one foot in width or depth, or for other places abroad two feet in length or one foot in width or depth. The limits of weight are 4 lb. for countries of the Postal Union, and 5 lb. in all other cases. Any number of newspapers may be sent as a book packet, but if sent as newspapers the specified rate must be paid for each paper, whether one or several be enclosed in the same cover.

An internal tax of two kreuzer, which is not a postal charge, is made by the Austro-Hungarian Government, on the delivery of all newspapers reaching the empire from other countries.

There is an old Act of 1837 which, although largely superseded by the Act of 1870, contains some still unrepealed provisions, notably sect. 5, under which persons enclosing in newspapers "letters, papers, or things," or writing on them or on their covers "unauthorized communications or marks" are liable, at the option of the Postmaster-General, "to be prosecuted as for a misdemeanour." The Telegraph Act 1868, empowers the Postmaster-General to make special arrangements for the transmission at reduced rates of news by wire. Post Office Acts were also passed in 1875 and in 1879, but they do not call for any special notice, such provisions as affect newspapers being included in the regulations given above.

7 Will. 4,
& 1 Vict.
c. 36.

Sect. 5.

31 & 32
Vict. c.
110.

38 & 39
Vict. c. 22.
44 & 45
Vict. c. 19.

CHAPTER III.

ADVERTISEMENTS.

SPEAKING generally, the law recognises no distinction between advertisements and the rest of the matter of which a paper is made up, and the proprietor or publisher may be proceeded against for any libellous or otherwise objectionable matter published as an advertisement, just as much as if it had appeared in the news or leader columns (*Brown v. Croome*). Of course, it would in most instances be difficult or impossible to prove malice in the case of a libellous advertisement; but negligence may lead to consequences equally unpleasant and costly. An advertisement may be sent from motives of malice or spite, containing charges of a nature that would never be inserted as news, and through the carelessness of a clerk or a printer it may appear.

2 Starkie,
297.
(1817.)

There is also a large class of so-called "legal" advertisements, which may contain insinuations of insolvency, of intention to abscond, or of actual crime, or which may amount to a contempt of court; in all these instances the publisher incurs serious responsibility. The law governing such cases will be found fully set forth in its proper place in the chapters devoted to Libel. When advertisements appearing to partake of an illegal character are offered, it is well to make sure of the *bona fides* of the person advertising, and if there be any ground for considering the adver-

tisement illegal, to refuse to accept it. It is usual in some offices to require from the advertiser an "indemnity," freeing the newspaper from responsibility, but, as will be explained further on in the present chapter, such a document is of no real value.

There are, however, certain classes of advertisements and similar matter which are the subjects of special statutes:—Advertisements of Lotteries, Betting Advertisements, Advertisements for Stolen Property, and Accident Insurance Coupons.

LOTTERIES.—Advertisements of Lotteries are dealt with in two Acts. The first of these, which dates from 1823, is to the effect that any person selling, or publishing any proposal or scheme for the sale of any ticket, or chance in any lottery, "authorised by any foreign potentate or state" or any other lottery "except such as shall be authorised by this or some other Act of Parliament," shall for every such offence forfeit fifty pounds (which must be sued for by the Attorney-General) "and shall also be deemed a rogue and vagabond."

4 Geo. 4,
c. 60, s. 41.

The above statute, which is still in force, applies primarily to the lotteries themselves; the second Lotteries Act of 1835 is aimed directly at advertisements in newspapers, or elsewhere. It enacts that if any person shall print or publish, or cause to be printed or published, any advertisement or other notice "concerning, or in any manner relating to" any foreign or other lottery "not authorised by some Act or Acts of Parliament," he shall forfeit fifty pounds, which sum, with full costs, may be recovered by action of debt, one moiety of the penalty going to the Crown, and the other to the informer. Since the passing of the first of these statutes,

6 & 7
Will. 4,
c. 66.

lotteries, as a mode of raising revenue, have been altogether abolished, so that with the exception of certain 'Art Union' drawings, licensed under 9 & 10 Vict. c. 48, no lotteries, home or foreign, may under any circumstances be advertised. The "common informer," however, has no longer the power to sue or claim half the penalty. By 8 & 9 Vict. c. 74, the penalties can only be sued for in the name of the law officers of the Crown, and the whole amount recovered goes to the Crown. Occasionally a lottery is got up and advertisements issued by persons ignorant of the law. In such cases the Crown does not generally press for the penalty, a plea of inadvertence and the payment of all costs being accepted as sufficient.

PRIZE COMPETITIONS.—It was for some time an open question whether the numerous "competitions" and "prizes" offered by certain newspapers, came within the provisions of the Lotteries Acts. It has recently been decided that they do come within the Acts, at any rate when the result of the competition is left to chance, or where it does not depend upon the skill of the competitors.

L. T. 21st
June, 1890.
J. P. 21st
June, 1890.

In *Reg. v. Dalziel*, the defendant was proprietor of a newspaper called *Ally Sloper's Half Holiday*. Two summonses were issued against him, the first charging him with unlawfully publishing in *Ally Sloper's Half Holiday* a certain proposal and scheme for the sale of chances in a lottery of and for the sum of £1000, the second with unlawfully selling a share of a chance in a lottery, contrary to the statute 4 Geo. 4, c. 60, s. 41. Publication and sale were not denied, and the whole question was whether the scheme announced amounted to a lottery within the Act. The announcement in question directed the readers of the paper to cut out a certain paragraph in each week's issue and keep

WHAT CONSTITUTES LOTTERY ADVERTISEMENT. 19

the cuttings until November 22, 1890, when they should post them, with names and addresses, to "Sloper's £1000 Competition, The Sloperies, E.C." It added further that "all had an equal chance." In the number for December 27 the name and address of the winner would be published. Sir John Bridge, Metropolitan Magistrate, said the questions raised were whether this was a lottery, and whether the words in sect. 41 of the Act were still in force. He decided both questions in the affirmative. As the case was a friendly one, brought to decide the question of law, the learned magistrate fined the defendant only one shilling on each summons, but he added that it must not be understood from this that the offence was merely a nominal one.

WHAT CONSTITUTES A LOTTERY ADVERTISEMENT.—As to what will amount to an advertisement of a lottery the recent case of *MacNee v. Persian Investment Corporation* 44 Ch. D. 306. (1890.) may be referred to.

Here the defendant company was formed for the purpose of acquiring and working a concession, conferring the exclusive privilege of conducting all operations in connection with lottery loans in Persia. It issued a prospectus setting forth the profits made by continental lotteries and announcing that the lotteries in Persia would be conducted by it on the same lines. It also stated that, under the concession, five issues had to be made yearly with minimum drawings of £10,000, and it estimated that these would return constantly increasing dividends. Plaintiff, who was a shareholder, brought an action to restrain the company from buying the concession and from circulating and advertising the prospectus. Held, that the agreement to purchase the concession was not illegal, and that the prospectus did not amount to an advertisement of a lottery within 6 & 7 Will. 4, c. 66.

BETTING.—The law affecting betting advertisements is contained in two Acts called shortly the Betting Acts of 1853 and 1874. These two Acts must be read together, the result being considerable doubt and uncertainty as

16 & 17
Vict.
c. 119.
37 Vict.
c. 15.

to the real meaning of the Act of 1874, which is the Act chiefly important as regards newspapers, and which read by itself would seem sufficiently clear.

16 & 17
Vict.
c. 119, s. 7.

The only section of the Act of 1853 which refers to advertisements is the 7th. That section is aimed at persons publishing, or causing to be published, advertisements whereby it shall be made to appear that "any house, office, room, or other place," is open or kept for betting purposes, and any person offending against this section is liable on summary conviction before two justices to a fine not exceeding £30 and costs.

37 Vict.
c. 15, s. 3.

The Act of 1874 provides (sect. 3) that any person sending, exhibiting, or publishing "any letter, circular, telegram, placard, handbill, or advertisement,"

Whereby it is made to appear that any person either in the United Kingdom or elsewhere will on application give information or advice for the purpose of, or with respect to, any such bet or wager, or any such contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager; *or*,

With intent to induce any person to apply to any house, office, rooms, or place, or to any person with the view of obtaining information or advice for the purpose of any such bet or wager; *or*,

Inviting any person to make or take any share in or in connection with any such bet or wager;

Shall be subject to the penalties provided in the seventh section of the principal Act.

These penalties are a fine "not exceeding" £30 and costs, and "in default or in the first instance if the justices shall think fit" imprisonment for not more than two months, with or without hard labour.

12 Q. B. D.
126.
(1883.)

Andrews v. Cox is the only reported case of a prosecution against the publisher of a newspaper under the Betting

Acts. The facts in that case were as follows:—Cox the appellant was the proprietor and publisher of the *Licensed Victuallers' Gazette*. In this newspaper there appeared on 31st of March, 1883, an announcement to the effect that "Centaur," the sporting correspondent of the paper, sent by telegram "direct from the course" the most "reliable" and latest news as to certain horse races, for half-a-crown each final. On an information laid by Andrews, Cox was convicted of an offence under sub-section 1 of section 3 of the Betting Act, 1874. He appealed, and the Divisional Court quashed the conviction. Mathew, J., in his judgment pointed out that the Act of 1874 was to be read along with the Act of 1853. The latter Act was for the purpose of putting down betting houses. Sub-section 1 of section 3 of the Act of 1874 refers only to offers to give information as to "any such bet or wager, or any such event or contingency as is mentioned in the principal Act," i.e., to bets and wagers made in "a house, office, room, or other place" kept for the purpose of betting.

STOLEN PROPERTY.—Advertisements offering a reward for stolen or lost property in certain cases come under the Larceny Act, 1861. Sect. 102 of the Act is to the effect that any one who shall publicly advertise a reward for the recovery of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any word purporting that no questions will be asked, or that no attempt will be made to seize or make inquiry after the person producing the property; or who shall promise or offer to any pawnbroker, or other person who may have bought or advanced money on the property, to return the money so paid or advanced, or any other money as a reward; or who shall print or publish such advertisement, shall forfeit the sum of £50 for every offence to any person who shall sue for the same. It may be noticed that the £50 penalty is fixed in amount and cannot be reduced by the Court.

24 & 25
Vict. c. 96.
Sect. 102.

Here again, as in the case of lottery advertisements, the power to prosecute has been limited by a later enactment. 33 & 34 Vict. c. 65, provides that no action shall be brought against a newspaper under sect. 102 of the Larceny Act, 1861, unless with the assent in writing of the Attorney-General or the Solicitor-General. It is most important, however, to notice that the word "newspaper" in this Act has a comparatively restricted meaning, being limited in sect. 2 to "a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post." In other words, all newspapers appearing at more than weekly intervals are excluded. All others are still open to the attentions of the "common informer." It is further provided that the action must be brought within six months of the date when the forfeiture was incurred; that is to say, of the date of publication.

ACCIDENT INSURANCE.—Another branch of modern advertising enterprise threatened some years ago to involve proprietors in serious penalties. Certain newspapers issued with each copy an "Accident Coupon," guaranteeing a sum of money to the holder in case of injury from an accident incurred while travelling by railway, or to his executors and administrators in case of death resulting from such accident. It was soon pointed out that this was in effect a "policy of insurance" under the Stamp Act of 1870, sect. 118 of which provides that

33 & 34
Vict. c. 97,
s. 118.

"Every person who . . . makes, executes, or delivers out or pays, or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy which is not duly stamped, shall forfeit the sum of twenty pounds." To stamp all the coupons in the

ACCIDENT INSURANCE.

case of largely circulated newspapers was clearly impossible; but a solution of the difficulty was discovered in the analogous provision that had been made by private Acts for the compounding of the stamp duties in the case of railway insurance tickets. Accordingly in the Revenue Act of 1889 the following clause was enacted:—

20. Whereas a practice has arisen of inserting in newspapers and other publications notices or advertisements which purport to insure the payment of money upon the death of the holder or bearer of the newspaper or publication containing the notice or advertisement only from accident or violence, or otherwise than from a natural cause, and doubts have arisen as to the liability of such notices or advertisements to the stamp duty of one penny imposed by the Stamp Act, 1870, upon a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence, or otherwise than from a natural cause, and it is expedient to remove such doubts and to make such provisions in relation to composition for the stamp duty as are in this section contained: Be it therefore enacted as follows:—

52 & 53
Vict. c. 42,
s. 20.

- F. B. Gregory*
- (a.) The expression "policy of insurance against accident" as used in this section means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and the term "policy" as defined in section one hundred and seventeen of the Stamp Act, 1870, shall be construed, in relation to a policy of insurance against accident, as including any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence, or otherwise than from a natural cause:
- (b.) Where any person or body, corporate or unincorporate, issuing policies of insurance against accident, shall in the opinion of the Commissioners of Inland

Revenue, so carry on the business of such insurance as to render it impracticable or inexpedient to require that the stamp duty of one penny as imposed by the Stamp Act, 1870, be charged and paid upon the policies, it shall be lawful for the said Commissioners to enter into an agreement with that person or body for the delivery to them of quarterly accounts of all sums received in respect of premiums on policies of insurance against accident, and the agreement shall be in such form and contain such terms and conditions as the said Commissioners may think proper :

- (c.) After an agreement has been entered into between the said Commissioners and any person or body under the foregoing provision and during the period for which the agreement is in force, no policy of insurance against accident issued by that person or body shall be chargeable with any stamp duty, but in lieu of and by way of composition for such stamp duty there shall be charged on the aggregate amount of all sums received in respect of premiums on policies of insurance against accident a duty at the rate of five pounds per centum, which duty shall be a stamp duty and shall be under the care and management of the said Commissioners, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are now vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for such purposes :
- (d.) The quarterly accounts to be delivered by or on behalf of any person or body to the said Commissioners shall be delivered within twenty days after the fifth day of April, the fifth day of July, the tenth day of October, and the fifth day of January in every year, and every account shall be a full and true account of all unstamped policies of insurance against accident issued by that person or body during the quarter of a year ending on any of the

said days next preceding the delivery thereof, and of all sums of money received for or in respect of such policies so issued during that quarter, and of all sums of money received and not already accounted for in respect of any other unstamped policies of insurance against accident issued at any time before the commencement of that quarter :

- (e.) The duty imposed by this section shall be paid on the delivery of the account, and unless then paid shall be a debt due to Her Majesty from the person or body by or on whose behalf the account is delivered :
- (f.) In the case of wilful neglect to deliver such an account as is hereby required or to pay the duty in conformity with this section, the person or body shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

INDECENT ADVERTISEMENTS.—An Act was passed in 1889, prohibiting the affixing, giving away in the streets, or exhibiting of any picture, or printed or written matter of an indecent or obscene character. This Act, as is clear from its wording, in no way affects newspapers or other publications. An attempt which was made to convict a newspaper under its provisions was dismissed by the magistrates, and the dismissal affirmed by the Queen's Bench Division : *In re Pearce*.

52 & 53
Vict. c. 18.

Times,
March 26,
1890.

RIGHT TO REJECT ADVERTISEMENTS.—It follows from the fact that newspapers are liable civilly and criminally for advertisements appearing in their columns that the publisher or editor is entitled to alter the advertisements sent in so far as to remove any libellous or other

illegal matter from them, or if the advertiser will not consent to this, to refuse to insert such advertisements altogether. Even in the case where a certain column or page has been leased to an advertiser for a given period, such refusal will not amount to a breach of contract, the contract really being only to insert such advertisements as the newspaper may legally publish. Accordingly when the editor or publisher of a newspaper refuses with good cause to insert advertisements sent by the lessee of a column or page, that will not prevent the newspaper recovering at any rate for the advertisements already inserted in pursuance of the contract, and probably the whole sum agreed to be paid for the lease of the column or page.

So far as advertisements are concerned this exact point does not seem to have been expressly decided, but the principle of it has been laid down on many occasions.

1 H. & N.
73.
(1856.)

The case of *Clay v. Yates* may be cited. There the plaintiff, a printer, agreed to print a book for the defendant. When the body of the book had been set up, the defendant forwarded to the printer a dedication which the plaintiff believed—and which the jury afterwards found—to be libellous. Thereupon the plaintiff refused to print the dedication, and demanded payment for the work already done. This the defendant refused, but on action it was held that the plaintiff was entitled to refuse to print libellous matter, and that, notwithstanding that refusal, he was entitled to recover under the agreement to print the book for the work done by him in fulfilment of that agreement. Martin, B., in his judgment said, "I cannot doubt that in this case, although the contract has never been performed, yet as the work was commenced on the retainers of the defendant, and in ignorance that part of it was unlawful, a duty arises to pay the plaintiff that part which he has performed." And Bramwell, B., said that the contract was to print a treatise and a

dedication. "That imposed on the defendant the obligation of furnishing a dedication such as the plaintiff could by law print." See also *Cowan v. Milbourne*.

L. R. 2 Ex.
230.
(1887.)

INDEMNITY INVALID.—If, however, a newspaper does publish an illegal advertisement, and proceedings are in consequence taken against it, the proprietor cannot recover from the advertiser the damages, or fine, and costs, which he has had to pay. This is on the principle recognised in the leading case of *Merryweather v. Nixian*, that there is no contribution between joint wrongdoers or joint offenders. Each is responsible for the whole damage or offence, and if the person injured, or the Crown, chooses to proceed against one of the wrongdoers or offenders only, the others cannot be called upon by the one proceeded against to bear part of the damages or penalty. If, however, the advertisement be on the face of it of an innocent character, and the newspaper published it not knowing that there is anything illegal in it—as for instance, if it appears to refer to indifferent matters, but to those who know the circumstances conveys a libellous imputation on a person's character or credit—then possibly the newspaper, if proceeded against, may be entitled to recover the costs and damages to which it has been put. See, on this point, the concluding remarks of Lord Kenyon, C.J., in *Merryweather v. Nixian*.

8 T. R. 186.
2 S. L. C.
546.
(1799.)

Supra.

But if the newspaper publish an advertisement, knowing it to be illegal—whether that illegality arises through its being libellous or being contrary to any of the Acts mentioned in this chapter—even an indemnity given by the advertiser to the newspaper, to secure it from loss through publishing the advertisement, will afford it no protection. An indemnity given to procure a breach of the law is illegal, and cannot be recovered

upon. The advertiser accordingly is not bound by it, and if he refuses to indemnify, the Courts will not compel him to do so.

2 Bing.
N. C. 634.
(1836.)

As an example of this the case of *Shackell v. Rosier* may be cited. There the plaintiff was the proprietor of the *John Bull* newspaper. At the request of the defendant, Rosier, he published an article reflecting on one Chalmers, who had received the royal pardon and relief from a sentence of death for murder. Chalmers sued the plaintiff for this article, and the jury found it libellous and gave Chalmers £30 damages. In consideration of the plaintiff's publishing the article and defending the action, the defendant had undertaken to indemnify the plaintiff. After the verdict for Chalmers, he refused to carry out this undertaking. On action the Court held that the agreement to indemnify the plaintiff was given for an illegal consideration and could not therefore be enforced. (See also *Colburn v. Patmore*, p. 73.)

CORRUPT PRACTICES ACTS.—A new offence has been created by these Acts, in reference to the publication of a false statement concerning the retirement of a candidate for the purpose of promoting or procuring the election of another candidate. This point will be fully dealt with (p. 185) in the chapter treating of libel as a criminal offence.

CHAPTER IV.

COPYRIGHT.

THE importance of the Law of Copyright in its application to the periodical press has greatly increased of late. There has grown up a class of publications composed largely or entirely of extracts from other newspapers, and the right of these papers to make use of matter for which others have paid may be called in question. The publication in ordinary newspapers of articles, sketches, and tales of permanent literary value, and altogether independent of passing events, has also raised the question of copyright as between the author and the newspaper proprietor on the one hand, or between the original purchaser and the "pirate" on the other. The practice of giving very extended extracts from a new work, in place of a review, has also threatened to involve the intervention of the law courts. For these reasons it will be necessary to discuss at some length the question of Copyright as it affects newspapers.

For present purposes copyright may be defined as the exclusive right to print and publish an actually existing literary composition. There is no copyright in mere ideas and projects. Copyright is a right which at Common Law attaches to a work when it is actually composed, and which by Statute Law attaches to it when it is actually printed and published. Neither the Common Law nor the Statute Law recognizes anything

in the nature of a prospective copyright—a copyright in literary work which may come into existence in the future.

NO PROSPECTIVE COPYRIGHT. — It may happen, for example, that the same proprietor owns two newspapers, morning and evening, or daily and weekly, one of which is largely composed of matter that has already appeared in the other. This arrangement works very well so long as both papers continue in the proprietorship of the same person; but in case of any division or partition of ownership disputes and difficulties will arise. The proprietor of the evening paper claims the right to make use, as before, of the premises, type, and machinery, and to continue to compile his news and articles from the morning paper—in a word, that he has a share in the “copyright” of the matter appearing therein. This was the state of affairs in *Platt v. Walter*, and it was decided that, in the absence of express agreement, no such right existed. So far as the matter is concerned, mere user, no matter how long continued, is of no avail, for the reason already given, that there can be no copyright in matter which may be published in the future, and therefore there is no existing right on which prescription can act.

17 L. T.
N. S. 159.
(1867.)

In *Platt and others v. Walter and others*, which will be found cited at length in the chapter on Proprietorship (p. 67), the plaintiffs, besides claiming the use of the defendants' type, claimed also a “share in the copyright,” as they called it, of the *Times*. By a share of the copyright was meant the right to abstract whatever matter they chose from the *Times*, and print it in their paper, the *Evening Mail*. This claim was based on long user. The Court held that this claim was ill founded. There could be no copyright in a non-existent

thing. Copyright only accrued when the matter was actually produced. Accordingly the plaintiffs could not be entitled to a share in, nor could prescription act upon, a right which was not yet in existence.

As has already been indicated, copyright is of two kinds, Common Law Copyright and Statutory Copyright. Speaking broadly, the first exists only in unpublished, the second only in published works. Before dealing with these separately, we may discuss one or two points common to both.

REQUISITES FOR COPYRIGHT.—In order that a literary composition may be the subject of copyright, either at Common Law or under the Copyright Acts, it must (1) be original in its nature; and (2) consist of matter the publication of which is not illegal.

ORIGINALITY.—First, as to originality. That a literary composition may be considered original, it is not necessary that it should consist exclusively, or indeed at all, of new materials. A work may be original not merely in its substance, but also in the expression or the arrangement of its substance. A summary of the proceedings in a court of law contains no original matter, yet it is entitled to copyright: (*Sweet v. Benning*.) Again, there is no original matter in a mere extract from an official paper, yet there may be copyright in a digest of such papers, or even in a series of extracts so arranged as to give complete information upon a given topic: (*Trade Auxiliary Company v. Middlesborough and District Tradesmen's Protection Association*.) As laid down by Lindley, L.J., in this case, the true test in deciding whether work is original or not is: Has the author or compiler bestowed any

16 C. B.
484.
(1855.)

40 Ch. D.
435.
(1889.)

brainwork upon it? If he has, whatever the result of the brainwork may be—whether a mere list of names and addresses, or a series of extracts from public documents—it is sufficiently original in its nature to entitle its author to the legal copyright in it.

Supra.

L. R. 1 Eq.
697.

(1866.)

3 L. J. 66.

(1824.)

3 V. & B.
78.

(1814.)

It has been held that there is copyright in a list of bills of sale and deeds of arrangement (*Trade Auxiliary Company v. Middlesborough, &c. Protection Association*); in a directory (*Kelly v. Morris*); in mathematical tables actually calculated by the plaintiff (*Baily v. Taylor*); and in a translation (*Wyatt v. Barnard*).

In each of these cases the material was common to every one who chose to make use of it, and, with regard to the first three of them, at any rate, it is evident that two or more persons working separately might produce an identical result. The copyright, therefore, is neither in the expression nor in the substance; it is in the compiler's labour. Any one is at liberty, for instance, to compile a press directory, none the less because another has previously compiled one. The second compiler, however, is not entitled to appropriate the result of the previous compiler's labour. He can compile one for himself, which may be identical in all material points with one already published, but he must go to the original sources of information—not merely abstract what the first writer has collected.

The importance of this principle is seen when we come to deal with the question whether there is copyright in the general news and in the parliamentary, judicial, and other reports appearing in newspapers.

COPYRIGHT IN NEWS.—No doubt there is copyright in the literary form given to news, even when it is a

mere statement or summary, still more in a "descriptive report," as it is called, of the proceedings in a law court or in Parliament. The difficulty is whether there is copyright in the substance of the news, or in the verbatim report of a speech. On the principle that applies in the cases of Directories and Lists of judgments, we are inclined to believe that there is. (See observations of Malins, V.C., in *Cox v. Land and Water Journal Company.*)

L. R. 9 Eq.
327.
(1889.)

It is difficult to see what distinction can be made between the skill and labour necessary to collect the news of a district and the skill and labour necessary to collect the names and residences of the inhabitants of a district, or to compile a list of the judgments recovered in a district. In all three cases the material on which the result is based is common to the world, and two persons working accurately on that material would produce practically the same result, and the result would be a statement of facts. The three cases would seem to be on all fours, and if protection is extended to the author or compiler in two cases, there can be no good reason why it should be refused in the third. This appears to have been the view of the Australian Court, which granted an injunction to restrain one newspaper from using the European telegrams sent to another.

See Copinger on Copyright, 2nd ed. p. 101.

As regards reports of speeches the same reasoning would apply. The labour and skill of the reporter reduces the spoken words which are common to all, to a form in which copyright comes into operation, and we submit that the reasoning applied to the case of directories, guide-books, or translations applies equally well to reports of speeches and lectures.

NOT ILLEGAL.—In the second place a literary composition in order to be the subject of copyright must not consist of matter the publication of which is illegal. There is no copyright in matter which is libellous in the broadest sense of that term—that is to say, which is defamatory, blasphemous, obscene, or seditious. The law on this point is well expressed in *Stockdale v. Onwhyn*.

7 Dow. &
Ry. 625.
(1826.)

This was an action for piracy. The subject of the alleged piracy was a work called "The Memoirs of Harriet Wilson," which purported to be an account of the life and adventures of a courtesan, and contained statements reflecting upon the characters of various persons, parts of it also being of a very licentious nature. It was held that the work being libellous could not be the subject of copyright. Holroyd, J., in delivering judgment, stated the *ratio decidendi* in this way: "The ground of this action, if any, must be that the defendant has worked an injury to the plaintiff's exclusive right of publishing the book in question; now, it is criminal in him to publish such a book; then he has no right to publish it, and having no right, he has sustained no injury, and has no ground of action."

Page 629.

The principle of this decision has been extended to cases where the work is not libellous in its nature, the illegality arising from a criminal misrepresentation made as to its authorship. Where this misrepresentation amounts to a false pretence the Courts will refuse to protect the dishonest author or publisher from piracy.

1 C. B.
Rep. 893.
(1845.)

The leading case upon this point is *Wright v. Tallis*. The work, the copyright of which was alleged to be infringed, was a book of devotion called, "Evening Devotions," and on its title page it was stated that it was "translated from the German of C. C. Sturm." Sturm was a religious writer whose productions were at the time greatly valued in England, and the defence was that the plaintiff, knowing this, had falsely and fraudulently alleged that this work was from his pen

in order to defraud and deceive the public. On demurrer, held that the defence was good. Tindal, C.J., said, "The publisher seeks to obtain money under false pretences; and as not only the original act of publishing the work, but the sale of copies to each individual purchaser falls within the reach of the same objection, we think the plaintiff cannot be considered as having a valid and subsisting copyright in the work, the sale of which produces such consequences, or that he is capable of maintaining an action in respect of its infringement." Page 907.

COMMON LAW COPYRIGHT.

At Common Law there is copyright in unpublished literary matter or in matter that has been published only to a limited number of persons who are, expressly or impliedly, pledged not to further print or publish it. After it has been published to the world at large its protection depends on the Copyright Acts.

So long as literary matter remains entirely unpublished it is the absolute property of the author or his assignee, who is entitled to do as he likes with it. The paper upon which it is written and the ideas and collocation of words it contains are alike his, and he is equally entitled to prevent any other person from appropriating the paper or publishing its contents. (*Prince Albert v. Strange.*) Nor is this right lost by a publication to a particular person or number of persons: it is only modified (per Lord Brougham *Jefferys v. Boosey*). The extent to which the author has in such a case parted with his copyright is determined by the object of the special publication as expressly stated or as indicated by the circumstances surrounding it. A teacher who reads a lecture to his class does not thereby give his hearers a right to print and publish it (per Lord Watson *Caird v. Sime*). Each hearer has however a right to take

2 De G. &
Sm. 652.
(1849.)

4 H. L. C.
815.
(1854.)

12 App.
Cas. 326.
(1887.)

notes, or, for that matter, a complete report of the lecture for his own edification. This right to prevent publication does not depend upon the author retaining the manuscript; the writer of a private letter is entitled to prevent the receiver from publishing it, unless the publication is necessary for the protection of the receiver's legal rights or character (*Lord and Lady Percival v. Phipps*).

2 V. & B.
19.
(1813.)

As has been said in cases of limited publication, the right of printing and publishing depends upon the object of the limited publication. Accordingly when a person sends to the editor of a newspaper a letter intended for publication, the editor is entitled to publish it. Not only so, but it would appear from one reported case that if the letter has been sent to one paper specially, the editor is entitled to prevent any other paper unauthorized by the writer from publishing it (*Hogg v. Kirby*). If, however, the writer of the letter withdraws his consent to publication before it has actually appeared, it seems that the editor is not entitled to publish it. (See *Davis v. Miller and Fairley*.)

8 Vesey,
215.
(1803.)

See *infra*,
p. 71.

17 Scotch
Sess. Cases,
2nd Series,
1166.

(1855.)

LECTURES.—The point on which difficulties most frequently arise is with regard to the publication of reports of lectures and sermons. As to lectures the Common Law is reinforced by a special Act of Parliament.

This statute enacts that the printer or publisher of any newspaper who shall, without the consent of the author or his assignee, print or publish any lectures shall be liable to the forfeiture mentioned in the statute, that is to lose all copies of the lectures printed by him, together with one penny for every copy found in his custody. By sect. 3 the fact that a person has paid

5 & 6
Wm. 4,
c. 65.
Sect. 2.

Sect. 3.

for admission to hear the lecture is not to be regarded as conferring a licence to print and publish it, and by section 4 the Act does not apply to lectures published by their authors or assignees, and of which the statutory term of copyright has expired. By the last section, however, this curious Act is rendered practically nugatory, as its application is limited to lectures of the delivery of which two days' previous notice has been given in writing to two justices living within five miles of the place where such lecture is to be delivered. And the Act is in no case to extend "to lectures delivered in any university or public school, or college, or in any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation." With regard to all these the law is left as it was before the Act was passed.

That law is simply what has been stated already with regard to works not printed and published. When a lecture is delivered, the question to be decided is, what was the lecturer's object? If he meant to publish his lecture merely to the audience before him, then there is only a limited publication, and the hearers have no right to print and publish it to the world. If on the other hand the object of the speaker was to publish his views to the whole world then the publication is not a limited one, and any one who chooses may print and publish the lecture. And in deciding the lecturer's object, the Courts will not inquire into his private intention. As the rule is based on an implied understanding between lecturer and audience, they will look merely to the circumstances from which the audience might gather the lecturer's intention. If these indicate that it was his wish merely to publish his lecture to those present at the time of

delivery, the audience will be held to have attended on the implied understanding that his wish should be respected. If the circumstances indicate no such wish, no such understanding will be implied. The circumstance most commonly held to indicate an intention to publish to the audience only, is, that admission was limited by payment or by favour. When admission is not restricted in any way, the Courts would probably consider that a general publication was intended, and that therefore anyone who chose might print and publish the lecture. The same rule applies to sermons. It is probable that the clergyman retains no copyright in a sermon preached in open church. This at any rate would seem to be the case with sermons delivered in a parish church at services to which every parishioner is entitled to admission.

Two important cases with regard to lectures have recently been decided. The first is *Nicola v. Pitman*. Here the plaintiff delivered a lecture at the Working Men's College, Bloomsbury. Admission was by ticket issued gratuitously by the Council of the College. The defendant was a shorthand writer and the owner of a newspaper called the *Phonographic Lecturer*. He attended the lecture and took what was practically a full report, which he afterwards printed in shorthand and published in his newspaper. The plaintiff, on discovering this, began an action for an injunction and damages. *Held*, that he was entitled to both. Kay, J., in delivering judgment said: "Where a lecture of this kind is delivered to an audience, especially where the audience is a limited one admitted by ticket, the understanding between the lecturer and the audience is that whether the lecture has been committed to writing beforehand or not, the audience are quite at liberty to take the fullest notes they like for their own personal purposes, but they are not at liberty, having taken those notes, to use them afterwards for the purpose of publishing the lecture for profit."

The other case is that of *Caird v. Sime* already referred to.

26 Ch. D.
374.
(1884.)

12 App.
Cas. 326.
(1887.)

It was a Scotch case which came before the House of Lords on appeal. The plaintiff was a professor in the University of Edinburgh and his complaint was that the defendant had published without his consent the lectures delivered by him to his class. It was shown that no one was entitled to attend these lectures unless he was a matriculated student of the University, and had paid the class fees. *Held*, by the Lord Chancellor and Lord Watson—Lord Fitzgerald dissenting—that under the circumstances it was clear that only a limited publication to the class was intended, and that consequently the lecturer's copyright in his lecture remained.

STATUTORY COPYRIGHT.

Before publication, as we have seen, the copyright of literary matter is protected by the common law. After publication, whatever may have been the law formerly, copyright now depends entirely upon statute.

Some authorities contend that the ancient common law assured to authors and their assigns a perpetual copyright which was not lost by the publication. Undoubtedly in the earlier half of last century the tendency of judicial opinion favoured this view. It was even decided by Lord Mansfield, C.J., in *Millar v. Taylor*, that not only did a perpetual copyright exist at common law, but that that right was not interfered with by the first Copyright Act. This decision, however, was shortly afterwards overruled in the House of Lords. In *Donaldson v. Beckett* it was held that whatever may have been the common law view, since the statute of Anne, copyright after publication depended entirely upon that statute. That Act has since been repealed by the Copyright Act of 1842; but the doctrine established in *Donaldson v. Beckett* still holds good. There is no perpetual copyright now recognized in English law save in

4 Burr.
2303.
(1769.)

8 Anne,
c. 16.

4 Burr.
2408.
(1774.)

5 & 6 Vict.
c. 45.

the case of copyrights vested in the Crown, and copyrights vested in the universities and colleges of Oxford and Cambridge, the universities of Dublin, Edinburgh, Glasgow, St. Andrews, and Aberdeen, and the colleges of Eton, Westminster, and Winchester (see sect. 27).

PUBLICATION.—Statutory copyright exists only in published works, “publication,” under the Copyright Act of 1842, meaning the sale or gratuitous distribution of copies. Publication must take place either first in the British dominions (49 & 50 Vict. c. 33, s. 8), or simultaneously in the British dominions and abroad (*Buxton v. James*). If the work be first published abroad, there is no copyright in it except such as may come to it through International Copyright Acts. The Act (sect. 29) extends to all parts of the British dominions.

5 C. B.
860.

(1848.)

7 Vict.
c. 12, s. 19;
10 & 11
Vict. c. 95;
15 Vict.
c. 12; 38
Vict. c. 12.

17 Ch. D.
708.

(1881.)

L. R. 9 Eq.
324.

(1888.)

NEWSPAPER A BOOK.—As it has been held in *Walter v. Howe*, overruling on this point *Cox v. Land and Water Journal Co.*, that a newspaper is a “book” within the Copyright Act of 1842; all the provisions of that statute concerning books apply also to newspapers, so far as the nature of the case will admit.

Sect. 3.

By section 3, the copyright in a book published during the author’s life shall endure for his lifetime and seven years after, or for forty-two years from the date of publication, whichever period may be the longer. In books first published after the author’s death, the copyright endures for forty-two years from the first publication.

Sect. 4.

Sect. 4 makes provision for books published before the passing of the Act; and sect. 5 empowers the Judicial Committee of the Privy Council to license the republication of a book when the author is dead, and the owner of

the copyright refuses to republish it, or to permit it to be republished.

Sect. 13 provides for the registration of books at Stationers' Hall. As each single number of a newspaper is a book within the Act, a separate registration of a single number may be made under this section (*Dicks v. Yates*). But there is another section of the Act (19) which applies specially to the registration of periodical publications.

Sect. 13.

18 Ch. D.
76.
(1881.)
Sect. 19.

It may also be mentioned that the protection afforded by the Act extends to plates, illustrations, &c., contained in the newspaper or book (*Maple & Co. v. Army and Navy Stores*).

21 Ch. D.
369.
(1882.)

We now proceed to consider the law of newspaper copyright as it affects the proprietor and the writer respectively.

POSITION OF NEWSPAPER PROPRIETOR.—In order that a newspaper proprietor may secure copyright in articles or other literary matter appearing in his paper, three things are necessary. In the first place there must be an agreement, express or implied, between him and the writer, that the copyright shall belong to him; in the second place, he must have paid the writer for the article; and, in the third place, the newspaper itself must have been registered as a book at Stationers' Hall.

Sect. 18.

Sect. 18.

Sect. 24.

AGREEMENT WITH WRITER.—First, then, as to the agreement. The law as to this depends upon the interpretation put upon the following words in sect. 18 of the Act:—

When any publisher or other person shall . . . project, conduct, or carry on . . . or be the proprietor of any ency-

clonædia, review, magazine, periodical work, &c. . . . and shall employ any persons to compose the same, or any volumes, parts, essays, articles or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions . . . shall be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, &c. . . . and paid for by such proprietor, &c. . . . the copyright in every such encyclopædia, &c. . . . and in every volume, part, essay, and portion so composed and paid for, shall be the property of such proprietor.

It is to be observed that these words do not make it necessary that there should be an express agreement that the copyright shall belong to the proprietor. Such an agreement may be, and as a matter of fact usually is, implied, from the circumstances surrounding the engagement. When there is no express agreement, the rule is that proof that the writer was employed to write, and was paid for writing the articles in question, will be sufficient to raise a presumption that the articles were written on the understanding that the copyright in them should belong to the newspaper proprietor.

16 C. B.
484.
(1855.)

The rule was laid down thus by Jervis, C.J., in *Sweet v. Benning*: "We all remain of the same opinion—that, where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, of necessity it is implied that the copyright of the articles so expressly written for such periodical, and paid for by the proprietors and publishers thereof, shall be the property of such proprietors and publishers."

At the same time, the mere fact that the author receives payment for the contribution is not in itself sufficient to prove that he was employed on the terms

that the copyright should belong to the proprietor. In *Walter v. Howe*, where the action was for infringement of copyright in reprinting a memoir of Lord Beaconsfield from the *Times*, and the only evidence of ownership was that the plaintiff had paid for the work, it was held by Jessel, M.R., that that was not sufficient; that the copyright might still be in the author, and that, therefore, the author should have been joined as co-plaintiff.

17 Ch. D.
708.
(1881.)

It is not necessary that the agreement should be with a single proprietor, and on terms that the copyright should belong to him alone. A number of proprietors may combine to employ a writer, on condition that the copyright shall belong to all of them (*Trade Auxiliary Co. v. Middlesborough, &c., Association*), a point which, in view of the growth of Syndicates for the publication of novels and articles in several newspapers simultaneously, is of considerable importance.

40 Ch. D.
425.
(1888.)

PAYMENT OF WRITER.—In the second place, the writer must be paid. The words of the statute are: "On the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor," &c. As was pointed out by Vice-Chancellor Shadwell in *Brown v. Cooke*, in order to make sense of this, it is necessary that the words "and paid for" should be read in connection with the previous part of the sentence—"Shall be composed under such employment . . . and paid for" (see *supra*). The meaning, then, is in the words of the Vice-Chancellor in the above case, "That if the publisher of a periodical work employs a person to write articles for him, and pays him for them upon the terms that the copyright shall be the proprietor's—i.e. the proprietor of a periodical work—

5 & 6 Vict.
c. 45, s. 18.

11 Jur. 77.
(1847.)

the proprietor shall have the copyright of the periodical work containing all the articles."

Supra.

The facts in *Brown v. Cooke* shew how strict the Courts are on this point. Here there was a motion for an injunction to restrain the defendant from publishing certain articles which had appeared in the *Medical Gazette*. From the affidavits it appeared that these articles were republished by the defendant with the consent of the writers; and it appeared, also, that while the publishers paid the Editor of the *Medical Gazette* a salary, still they paid nothing directly to the writers. Whatever remuneration the writers received was the result of a private bargain between them and the editor, with which the publishers appeared to have nothing to do. The Vice-Chancellor, while admitting that under certain circumstances payment by an editor might be equivalent for all purposes to payment by the proprietor or publisher, declined to grant an injunction. It seemed to him, on the facts set forth in the affidavits, to be a matter that should go to trial, whether the payments made by the editor were such as were rendered necessary by the Act to vest the copyright in the proprietor of the paper.

Again, a contract to pay for an article is not sufficient to vest the copyright in the proprietor of the newspaper in which it has appeared: actual payment is necessary.

¹ Sim.
N. S. 336.
(1851.)

This was decided in *Richardson v. Gilbert*, which was a motion to dissolve an injunction granted to restrain the defendant from publishing an article which had appeared in the *Dublin Review*. From the affidavits it appeared that the plaintiffs had contracted to pay the author for the article. This was not considered by the Vice-Chancellor sufficient, as in his opinion payment was a condition precedent to any vesting of the copyright in the plaintiffs, but as it appeared from other affidavits that the copyright was in the plaintiffs, the judge held that the presumption was that the contract to pay had been fulfilled and payment actually made.

It is not clear from this case whether actual payment is a condition precedent to the vesting of the copyright,

or only to the right to sue for any infringement of it. This distinction is of much importance; since, if actual payment is a condition precedent to the vesting of the copyright, it would appear that the proprietor is only entitled to restrain infringement occurring after the payment has been made (*Tuck & Sons v. Priester*). This point was expressly raised in the case, already several times referred to, of *Trade Auxiliary Co. v. Middlesborough, &c., Association*. Chitty, J., while refusing to decide the point, on the ground that if the defendants intended to rely upon it, they should have raised it in cross-examination, nevertheless showed that, in his opinion, actual payment was merely a condition precedent to the right to sue. He said: "As has been pointed out, the part of the sentence 'paid for by such proprietor' is not grammatical, as it is quite clear that the proprietor of a magazine or periodical which has been registered cannot bring his action until he not only is registered, but has also paid the person who has composed the article for him."

19 Q. B. D.
630.

(1887.)

40 Ch. D.

430.
(1888.)

REGISTRATION.—In the third place the newspaper must be registered at Stationers' Hall. This, strictly speaking, is not a requisite to obtain the copyright, it is rather a requisite to secure a remedy against persons guilty of piracy. In the words of Chitty, J., in the case just cited, registration is only a condition precedent to suing. Consequently it is not necessary to register before infringement of copyright has taken place. It is sufficient if the registration is made at any time after publication and before the action for infringement of copyright is brought. An action then lies for infringement occurring both before and after registration.

This is clear from sect. 24 of the Act, which runs as follows:—

No proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company, of such book, pursuant to this Act. Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid.

The mode of registration is set forth in sect. 19 of the Act.

The proprietor of the copyright in any . . . periodical work . . . shall be entitled to all the benefits of the registration at Stationers' Hall under this Act on entering in the said book of registry the title of such . . . periodical work . . . the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

Sect. 13. There have been many decisions upon this section, and the corresponding one which applies to the registration of books. The general result of these may be summed up as follows:—Registration of a periodical must be made *after* publication; and the registration, in order to apply to the whole series, must be of the first number, or of the first number published after the passing of the Act (1st July, 1842): (*Henderson v. Maxwell*).
 4 Ch. D.
 163.
 (1876.) At the same time, as we have seen, the registration

of any single number will be effectual to protect the contents of that number, as each number of a periodical is itself a book and may be registered separately under sect. 13 (*Dicks v. Yates*). Both the exact title of the newspaper and the exact date of its first publication must be registered, that is, in case of a monthly publication, for example, not only the month and year, but also the day of the month. Default or inaccuracy in either of these will render the registration useless (*Collingridge v. Emmott*). Where the proprietor of the newspaper and the publisher are different persons, the names of both must be registered, but where the proprietors or publishers are a firm either the names of all the partners or the partnership name may be registered (*Low v. Routledge*). The clause requiring the registration of the place of abode of the proprietor and publisher would seem to be sufficiently observed by the registration of the place of publication (*Nottage v. Jackson*).

18 Ch. D.
76.
(1881.)

57 L. T.
864.
(1887.)

33 L. J.
Ch. 717.
(1884.)

49 L. T.
N. S.
(1883.)

These requisites being complied with, the proprietor is entitled to sue for infringement of copyright although the newspaper may not have been registered under the Newspaper Libel and Registration Act, and although the defendant may have taken the pirated matter not directly out of the newspaper registered at Stationers' Hall, but as it appeared in another paper belonging to the same proprietor and not so registered (*Cate v. Devon and Exeter Constitutional Newspaper Co., Limited*).

40 Ch. D.
500.
(1889.)

The case of *Dicks v. Yates*, which has already been referred to, is important with respect to the time and mode of registration. The action was brought by the proprietor of a journal called *Every Week* against the proprietor of the *World* for infringement of copyright. The infringement complained of was in respect to a novel, "Splendid Misery," which was being published in the plaintiff's journal in weekly instal-

18 Ch. D.
76.
(1881.)

ments. One of the objections taken by the defendant was that there was no proper registration. On the part of the plaintiff it was proved that there had been two registrations. The first registration was of the journal itself, *Every Week*, and this had been made before the first number of that publication had appeared. The second was of the proprietorship of the novel. In it the date given as the day of first publication was the date of the issue of the journal which contained the first instalment of the novel. This registration was made after all the work had been published. Held, by the Court of Appeal, that the registration of the journal having taken place previous to publication was bad, and that the registration of the novel, though it took place after the whole story had appeared, was good. Jessel, M.R., in delivering judgment, said: "The first registration is a registration of *Every Week*. That appears to be a bad registration, because it was made before that periodical was published at all. But there is a second registration, and the second registration is of the first part of 'Splendid Misery,' and is in every respect correct, unless we accede to the argument that the registration is invalid because at the time the first part was registered the second and subsequent parts had been published. I am quite unable to follow that argument. The registration informs the public of everything that the public could have any possible desire or right to know. It cannot be less a registration of the first part because the other parts had been published. Each part may be registered separately, each part was actually published separately, and each part is, according to the definition in the Act of Parliament, a book. It appears to me there is no tenable objection to the second registration."

40 Ch. D.
500.
(1889.)

The case of *Cate and Others v. The Devon and Exeter Constitutional Newspaper Co. (Limited)* may also be cited. Here Mr. Cate was one of three plaintiffs who applied for an interim injunction to restrain the defendants from publishing certain matter, the copyright of which was in the plaintiffs. It appeared that each of the plaintiffs was the owner of a newspaper, and that they united to pay certain persons for compiling a list of registered bills of sale, &c. This list each plaintiff published in his journal. These journals were not

registered under the Newspaper Libel and Registration Act, 1881, but they were registered under the Copyright Act. Cate's journal, however, which was called and registered as the *Commercial Compendium*, issued a special edition under another name, which was circulated by a certain trade association as a confidential circular to its subscribers. This special edition was not registered at Stationers' Hall, and it was from this that the defendants abstracted the matter in question. The defendants resisted the motion on the following grounds, amongst others: (1.) That if there was any infringement at all it was only as to Cate's paper, from which the matter had been taken, and there was no proper registration of it under the Copyright Act, since the date of first publication registered was June 15, 1858, while, on the face of it, it was stated to have been established in 1855. (2.) That none of the plaintiffs' newspapers were registered under the Newspaper Libel and Registration Act, 1881. (3.) That the matter in question was not taken directly from any of the newspapers, but from the Trade Association's confidential circular which was not registered under either the Newspaper Libel Act or the Copyright Act. North, J., overruled all these objections. He held that wherever the matter was immediately taken from, since the copyright was in all the three plaintiffs, they were all entitled to an injunction, that it lay on the defendants to show that the registered date of first publication was not the actual date, and that the mere discrepancy between it and the statement on the front of the journal was not enough, and that registration under the Newspaper Libel and Registration Act was a duty of the publisher, and that, therefore, the proprietor could not lose his copyright by the publisher failing to register. Lastly, as to the non-registration of the circular edition of the *Commercial Compendium*, his lordship pointed out that registration of every form in which copyright matter was published was not necessary; that all that was necessary was registration of one publication containing it. His lordship in conclusion explained the difficulty which existed as to the exact form the relief should take, as there was no copyright in what should henceforth appear in the plaintiffs' journals, and accordingly an injunction could not be granted to prevent the

defendants printing future issues of these journals. All that could be done was to grant an injunction as to the matter already published and printed.

57 L. T.
864.
(1887.)

Finally, the case of *Collingridge v. Emmott* may be referred to as showing the need of great care in registering both the exact date of publication and the exact title of the newspaper. This was a case of obvious and admitted piracy, yet the plaintiffs failed in their action because (1) the day of first publication was not registered, but only the month; (2) the paper had been registered as the "*Warehousemen's and Drapers' Trade Journal; Failures and Arrangements*," while its real title was the "*Warehousemen's and Drapers' Trade Journal and Review of the Textile Fabric Manufactures*."

3 L. T.
N. S. 225.
(1860.)

It may be noticed that in *Crookes v. Petter*—which was not, however, a decision upon this statute—it was decided that the editor's name did not form part of the paper's title. The facts were as follows: The plaintiff and defendant agreed that the plaintiff should be editor of a newspaper to be started by the defendant, the name of which was to be agreed upon between them. The journal was called "*The Photographic News, a Weekly Record of the Progress of Photography*," Edited by W. Crookes, F.C.S." Afterwards the defendant removed the latter words—"Edited by W. Crookes, F.C.S." On the application of the plaintiff for an injunction to prevent this, it was refused on the ground that these words did not form part of the title of the journal, and that consequently its removal was not an alteration of the title agreed upon between the plaintiff and the defendant.

NATURE OF PROPRIETOR'S COPYRIGHT.—Where, then, the proprietor of a newspaper has employed the writer of articles appearing in it, has paid him and has duly registered the newspaper, the copyright in the articles belongs to him, and he can restrain any other person from publishing them. The copyright which he has, however, is a specially limited one. It lasts not for forty-two but only for twenty-eight years, and he is not entitled to publish the articles separately without the consent previously obtained of the author.

5 & 6 Vict.
c. 45, s. 18.

What amounts to a separate publication? It would seem that republishing an article in any other form than as part of a reprint of the original issue of the newspaper which contained it will amount to a separate publication within the Act. This appears from the case of *Smith v. Johnson*.

33 L. J.
Ch. 137.
(1863.)

Here the plaintiff was the writer of a novel which had appeared in the defendant's paper, the *London Journal*. The defendant began the issue of what was called "supplementary numbers," which could be bought along with or separate from the current numbers. They were composed of stories and other matter which had previously appeared in the *London Journal*. The plaintiff's story appearing in these supplementary numbers, he applied for an injunction on the ground that this was a separate publication of it. Stuart, V.C., held that he was entitled to the relief sought. "Publishing separately," said his honour, "must mean separately from something. What is that publishing which the Act of Parliament says shall not be separately made? It must be the publishing of the part or portion separately from that which has been before published."

Again in *Mayhew v. Maxwell* the facts were as follows: The defendant had employed and paid the plaintiff to write a short story for the Christmas number of the *Welcome Guest*. This number was called "The Christmas Number of the *Welcome Guest*, or the Wedding Rings of Shrimlington-super-Mare, with stories about those who wore them for better and for worse," and it was made up of stories by five authors. Shortly after its publication the defendants announced their intention of republishing "The Wedding Ring," &c., together with an extra story by another author, the whole being offered at a much higher price than had been charged for the Christmas number. Held by Vice-Chancellor Wood that this amounted to a separate publication of the plaintiff's story, and that he was entitled to an injunction.

1 John. &
Hem. 312.
(1860.)

POSITION OF WRITER.—In explaining the position of the proprietor of a newspaper under the Copyright

Act we have indirectly explained that of the writer. It will be necessary to say only a few words more upon that subject.

As we have seen, the proprietor is, in the absence of special agreement, entitled to the copyright of matter published in his newspaper for twenty-eight years after publication. The author, on the other hand, is entitled during that time to prevent him from publishing that matter separately. The author has this right independent of any registration. In the case last cited *Supra.* (*Mayhew v. Maxwell*) it was expressly decided that the author's right to prevent a separate publication of his work was not copyright within the terms of the Act, and consequently as far as it was concerned no registration was necessary.

Upon the expiration of the twenty-eight years following publication, the copyright reverts to the writer for the remainder of the full term of author's copyright. *Sect. 18.*

It is to be observed that these are only the relations which the Act will create between writer and proprietor in the absence of express agreement to a different effect. In sect. 18, it is provided that the writer may reserve the right to publish his article or other work separately immediately after its appearance in the newspaper, and in the same way he may agree that the whole copyright shall vest absolutely in the proprietor, who will then be entitled to copyright for the whole term, and to publish the work separately as soon as he thinks fit.

PIRACY.—Piracy may be shortly defined as the illegal reproduction, literally or substantially, of the whole or part of a work in which copyright exists.

The literal reproduction, without the consent of the

owner of the copyright, of the whole work may be said to amount practically in all cases to piracy. But whether the substantial reproduction of the whole work or the literal reproduction of part of it amounts to piracy, depends upon whether the reproduction goes beyond what the law considers a fair use of the copyright work. It is impossible to lay down a hard and fast line between what is a fair and what is an unfair use of a copyright work. Every case must be considered on its own merits, and in many instances which lie upon the borderland, the ultimate result will depend upon the personal inclination of the judge. Various rough tests may, however, be given, by which, as a rule, the question of fair or unfair reproduction may be decided. These tests vary according to the nature of the work in which copyright exists, and the nature and extent of the use made of it.

PIRACY BY QUOTATION.—What will be held to amount to piracy by quotation depends largely on the object with which the quotations were made. If they were made with the *bonâ fide* purpose of illustrating a review or criticism of the work, scarcely any limits will be placed upon the right to quote. In the case of *Cary v. Kearsley*, Lord Ellenborough, L.C.J., expressed a doubt whether the literal reproduction of the whole work would amount to piracy if it was reproduced not with the design of appropriating the benefit of the copyright, but with the object of refuting or annotating the views expressed in the work. 4 Esp. 169.
(1802.)

Where, however, the extracts are made, not for the purpose of illustrating a review or criticism, the test of whether they amount or do not amount to piracy seems to be, Are they or are they not calculated to prejudice

the owner of the copyright in the work from which they are taken? And in deciding this point, regard must be had not merely to the quantity but to the nature of the quotations. If the quotations are calculated to supersede to a greater or less extent the original work by making that work less interesting to readers in general, or by supplying all of it that is of interest or value to a certain class of readers, then, however small in amount the extracts may be, they will constitute a piracy upon the owner of the original work (*Trade Auxiliary Co. v. Middlesborough, &c., Association*).

40 Ch. D.
425.
(1888.)

PIRACY OF SUBSTANCE.—Piracy of substance may be of two kinds. The first arises through the adoption, *in literis verbis* or otherwise, of literary matter in which only an imperfect copyright exists, the second through the adoption not *in literis verbis* of the substance of literary matter in which complete copyright exists. The first class occupies a kind of middle position between piracy by quotation and strict piracy of substance; and as the principles affecting the two kinds are somewhat different, we will consider them separately.

First, then, as to piracy of works in which only an imperfect copyright exists. These are compilations and other works, the original materials of which are common to the world. Here no copyright, strictly speaking, exists in the substance, for anyone is entitled to use that substance. And there can scarcely be said to be any copyright in the literary form, since two persons working on the given materials would produce practically identical works. Nevertheless, as we have seen, there is a copyright in the labour expended on the work which the Court will protect against subsequent compilers. How

See p. 32.

thorough this protection is will appear from the following case :—

In *Kelly v. Morris* the facts were as follows: The plaintiff was owner and publisher of the "Post-Office London Directory," and the defendant was the publisher of the "Imperial Directory of London." The application was for an injunction on the ground that the defendant's publication was a mere piracy of the plaintiff's. It appeared that the defendant had in compiling his directory given his canvassers lists of inhabitants taken from the plaintiff's directory, which the canvassers checked by going round and asking the persons if the information was correct. These lists so corrected he then incorporated in his directory. Some blunders which appeared in the plaintiff's directory appeared in the defendant's too. These were accounted for by the alleged negligence of one of the defendant's canvassers, who it was admitted had not made the necessary inquiries. *Held*, that on these facts defendant's directory was a piracy on the plaintiff's. Wood, V.C., in delivering judgment said: "In the case of a directory map, guide-book, or directory, when there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book he must count the milestones for himself. In the case of a map of a newly-discovered island . . . he must go through the whole process of triangulation just as if he had never seen any former map and generally he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained. So in the present case, the defendant could not take a single line of the plaintiff's directory for the purpose of saving himself labour and trouble in getting his information."

See further *Morris v. Wright*.

As has already been pointed out, the law as to the pro-

L. R. 1 Eq.
697.
(1868.)

L. R. 5 Ch.
App. 279.
(1870.)

tection of literary work, the subject-matter of which is common to the world, is of much importance to newspapers; for there is little doubt that paragraphs of news, special telegrams, and reports of all sorts, whether verbatim or summarised, come within it. As yet, however, the point has not been expressly decided, for no newspaper in England appears to have attempted to obtain an injunction to restrain another newspaper from copying, with or without alteration, its telegrams or parliamentary or judicial reports. The nearest approach to this is in the case of *Cox v. Land and Water Journal Co.*, where the question was as to the right of one newspaper to copy lists of hunting appointments from another. There an interlocutory injunction was refused on the ground that the case was not a proper one for an injunction; but in refusing it Malins, V.C., expressed his opinion that information published in newspapers was entitled to protection. Another important decision is the recent case of the *Trade Auxiliary Co. v. Middlesborough, &c., Association*.

L. R. 9 Eq.
324.
(1869.)

40 Ch. D.
425.
(1888.)

In the *Trade Auxiliary Co. and Others v. Middlesborough, &c., Association*, which has already been several times alluded to, the facts were as follows: The plaintiffs were separate owners of three different newspapers, and they jointly retained and paid certain persons for compiling lists of bills of sale and deeds of arrangement registered under the Acts of 1882 and 1887. It was proved that it required a certain degree of skill to do this, and the fees which had to be paid amounted in the aggregate to a considerable sum yearly. The defendants were an association established for the purpose of supplying trade information to the tradesmen in Middlesborough and the neighbourhood. By means of inserting fictitious entries in their lists, the plaintiffs proved that the defendant Association was accustomed to abstract from these lists the entries which referred to Middlesborough

and neighbourhood, and putting these on sheets of paper to circulate them among its members. There was no general publication. *Held*, both by the Court of First Instance and by the Court of Appeal, that this constituted a piracy. Chitty, J., in delivering judgment said: "As to the amount, the defendants, as I say, take all that part which is material to them, and they take it for the same purpose, viz., for giving information to tradesmen in the district. Then, as regards the quantity that is in any particular number, it cannot be great, because the district is not very large; but it is not the case of a single taking. It is obviously, on the evidence, a case of taking week by week. Then it is a taking for the same purpose. It is therefore taking for a competing purpose, and I think the first point must be decided in favour of the plaintiffs—that the piracy is of that character that an injunction ought to go against the repetition of it, but, of course, not against the repetition in respect to that in which the plaintiffs at the present have no copyright, viz., their unpublished matter."

As to piracy of substance in works where the copyright is complete, a few words will suffice. The way in which piracy of these most frequently arises is by the publication of avowed abridgments, digests, *précis*, &c. The test by which it may be decided whether any such abridgment is or is not a piracy of the original work is, not whether it is calculated to injure the sale of the original work, but whether it is itself a new work—that is, not merely a series of extracts patched together, but a real and *bonâ fide* condensation of the original work, which involved mental exertion on the abridger's part.

In *Dickens v. Lee* the action was brought by the late Charles Dickens for piracy of his well-known "Christmas Carol." The defendant had published in Parley's Illuminated Library what he called "A Christmas Ghost Story, re-

8 Jur. 183.
(1844.)

originated from the original by Charles Dickens, Esq., and analytically condensed expressly for this work." Knight Bruce, V.C., held that this amounted to a clear infringement of copyright. His judgment is important as an authoritative exposition of what is meant by an abridgment of an original work. "The defendant has printed and published a novel of which fable, persons, names, and characters of persons, the age, time, country, and scene are exactly the same; the style of language in which the story is told is in many instances identical, in all similar, except when certain alterations by way of extension or substitution have been made, as to which, whether they improve or do not improve upon the original composition, it is not necessary for me to express any opinion. Now this has been said to be an abridgment, and as an abridgment to be protected. I am not aware that one man has the right to abridge the works of another. On the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has a right to abridge and so publish in an abridged form the work of another, without more, is going much beyond my notion of what the law of this country is. The expressions of Lord Eldon, applied to a subject of copyright very different from the present, but still applied to the subject of copyright, are these: 'The question upon the whole is whether this is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work.' And I agree that there may be such an use of another man's publication as, involving the exercise of a new mental operation, may fairly and legitimately involve it. It does not appear to me that there is anything in the present case which brings that which the defendant has done within a legitimate use of the plaintiff's publication, within the terms 'fair exercise of a mental operation,' or within the expression of 'deserving the character of an original work.' I think it, therefore, entirely excluded from Lord Eldon's definition, if as a definition Lord Eldon meant it. It appears to me to be a mere borrowing with alterations and departures merely colourable, and when it is said that

the difference of price and other circumstances of difference belonging to it are such as to render the conversion of no practicable mischief to the plaintiff, the person whose property is taken is entitled to judge for himself how far he will consider that abstraction of his property to be prejudicial or not prejudicial. It is a valuable property, and he is entitled to be protected from the unauthorised use of it by another."

CHAPTER V.

PROPRIETOR AND STAFF.

PROPERTY IN TITLE. — There is no copyright in the name of a newspaper, and the registration of a name at Stationers' Hall by one person does not in any way affect the right of another person to start a newspaper under the same title. But the exclusive right to publish a newspaper bearing a certain name may be acquired, and when acquired it becomes a property which the Courts will protect. It cannot be acquired merely by prior invention or by prior registration, but only by "user and reputation." When a newspaper has been published for such a period, or under such circumstances, that the public has come to associate the name with the newspaper, the publisher acquires a property in that name, and if any other person should start a newspaper bearing the same name, or one so similar as to be likely to mislead the public, and damage the property of the person who first used it, the Courts will grant an injunction to restrain him. This is practically the whole law upon the subject, as appears from a recent case.

38 Ch. D.
139.
(1888.)

In *The Licensed Victuallers' Newspaper Co. v. Bingham* the plaintiffs applied for an interim injunction under the following circumstances. They had on the 3rd of February published the first number of a newspaper called the *Licensed Victuallers' Mirror*. On the next day they registered as proprietors at Stationers' Hall, and duly deposited copies at

the British Museum. They had previous to publication advertised their intention of starting a newspaper, but had not mentioned its name. Three days later, on the 6th of February, the defendant published the first number of another paper under the same title which he registered at Somerset House and Stationers' Hall. Thereupon the plaintiffs applied for an injunction to restrain the defendant from publishing a newspaper under that name or any other name so closely resembling that one as to mislead the public. The sales of the plaintiffs' paper before the issue of the defendant's were very small. It was proved also that the defendant had previous to the issue of the plaintiffs' paper registered at Stationers' Hall some twenty-eight newspaper titles, all beginning "The Licensed Victuallers'," but the "Licensed Victuallers' Mirror" was not among them. *Held*, that the plaintiffs were not entitled to an injunction on the ground that the plaintiffs' paper was not an article known in the market, or having any reputation which could induce the public to buy the defendant's paper as being that of the plaintiffs—the mere registration in itself giving no exclusive right to the name, which right can only be acquired by user and reputation. On appeal the decision was affirmed.

See also *Dicks v. Yates*.

18 Ch. D.
76.
(1881.)

To constitute an infringement of this right two things are necessary: the name of the second newspaper must be so like that of the first as to be calculated to deceive the public; and there must be reason to believe that the first newspaper will suffer damage thereby. It is to be observed that, in deciding whether the name of the second newspaper is likely to deceive the public, the Court will take into consideration other resemblances besides that in the names between the two newspapers—such as the kind of type used, the manner in which the papers are advertised, the position even of the publishing offices, and indeed all circumstances likely to assist in inducing the public to believe that the two news-

papers are one and the same, or that they are owned by the same person.

An important case, in which all these circumstances were discussed, is that of *Borthwick v. The Evening Post*.

37 Ch. D.
449.
(1888.)

In this case the facts were as follows: The plaintiff was the owner of the *Morning Post*. The defendants were a joint stock company which owned an old-established paper called *Daily Recorder of Commerce*. In December, 1887, they announced their intention of starting a new evening paper to be called the *Evening Post* with which the *Daily Recorder* would be incorporated. Thereupon the plaintiff applied for an injunction to restrain the defendants from publishing a newspaper under that name or under any other name of which the word "Post" formed part.

The first number of the *Evening Post* was published on the 21st of December, 1887. The words "*The Evening Post*" were printed at the head of the paper in old English type, and underneath in smaller type were printed the words "With which is incorporated the *Daily Recorder*." Amongst other circumstances dwelt upon in the course of the hearing were the following: The new paper consisted of four pages, the *Morning Post* of eight. The *Evening Post* had no advertisements on the front page; the front page of the *Morning Post* consisted entirely of advertisements. The price of the papers was the same. The office of the *Evening Post* was in Fleet Street; the *Morning Post* being published in Wellington Street, Strand. The placards issued by the two papers were printed in different colours.

Evidence was given that some twelve persons had called at the office of the *Morning Post* to ask for copies of the *Evening Post*. The defendants on the other hand submitted evidence to shew that many London and provincial papers had had, and some still have, the word *Post* as part of their title.

On these facts, Kay, J., held that the title of the defendants' paper, and the circumstances connected with its issue, were such as to deceive the public and damage the plaintiffs, and he therefore granted the injunction prayed for. The

defendants appealed, and the Court of Appeal reversed Mr. Justice Kay's decision, holding that though the defendants' conduct was calculated to deceive and had deceived the public, still there was no evidence that the plaintiff had suffered any damage hitherto, and no likelihood that he would suffer any in the future through the deception. They based this conclusion chiefly on the ground that as the one was a morning and the other an evening paper, there could be no real competition between them. The appeal was allowed, but without costs.

See also *Correspondent Newspaper Co. v. Saunders*.

12 L. T.
N. S. 540.
(1865.)

NATURE OF PROPERTY IN TITLE.—The exclusive right to publish a newspaper bearing a certain title being property, it is subject to the ordinary incidents of property—that is to say, it can be freely disposed of altogether or *pro tanto* by the owner. As, however, it is incorporeal in its nature, and is also the subject of several special enactments, such as those relating to registration, &c., the usual rules of law as to property are somewhat modified in their application to it. We have already discussed this partly in the chapter on Registration, and so it will not be necessary to say much here.

The exclusive right to publish is personalty, and accordingly on the owner's death intestate it will go to his administrator, who will be trustee for the intestate's next of kin, according to the Statutes of Distribution (*Gibblett v. Read*). At the same time, though it is personal property, yet as it is a peculiar kind of personal property that cannot be bought at any time in the open market, a contract to sell it will be specifically enforced by the Court (*Hutton v. Beeton*). Like other personal property, the right to publish a newspaper would seem to be assignable without a deed; but if, along with the right to

9 Mod. Rep.
459.
(1747.)

9 Jurist,
N. S. 1310.
(1863.)

publish, the plant and premises are assigned, a deed is then necessary.

It frequently happens that the original proprietor's name forms part of the title of a publication, as, for instance, *Lloyd's Weekly London Newspaper* or "Fraser's Magazine." When a newspaper bearing such a title is assigned by the original proprietor, the assignment gives the assignee the right to use the original proprietor's name, and any attempt of the original proprietor to withdraw from the assignee the benefit to be derived from the use of his name will be restrained by the Court.

L. R. 19
Eq. 207.
(1874.)

In *Ward v. Beeton* the defendant had been the originator and proprietor of a work called "Beeton's Christmas Annual." In 1869 he sold this and his other works to Messrs. Ward, Lock, & Tyler, and entered into a contract with that firm, by which, in return for a certain salary, he undertook to give all his services to that firm. He edited "Beeton's Christmas Annual" for the firm for some years; but the latter, becoming discontented with the way the work was done, in 1874 put it into another writer's hands. Thereupon the defendant issued an advertisement announcing that he had nothing whatever to do with the "Beeton's Christmas Annual" issued by the plaintiffs, and that he was preparing his usual annual, which, under the name of "Jon Duan," would be issued, not by Messrs. Ward, Lock, & Tyler, but by Messrs. Weldon & Co. Upon these facts, on the application of Messrs. Ward, Lock, & Tyler, an injunction was granted to restrain the defendant from publishing any such advertisements. (Cf. *Crookes v. Petter*, p. 50.)

Page 7.

MORTGAGES OF NEWSPAPERS.—We have already pointed out that the right to publish a newspaper is "goods and chattels" within the Bankruptcy Act, and consequently if the mortgagee neglect to have himself registered under the Libel and Registration Act, 1881,

44 & 45
Vlct. c. 60.

in the event of the mortgagor becoming bankrupt the trustee will be entitled to claim the newspaper as goods and chattels in the bankrupt's possession, order, or disposition.

46 & 47
Vict. c. 82,
s. 44,
sub-s. 2.

Neglect to register, however, does not affect the mortgagee's right to the plant and premises if they are included—as they usually are—in the mortgage of the newspaper. Mortgages of the plant should be registered under the Bills of Sale Acts unless the only plant mortgaged is fixed machinery coming within the exceptions contained in sect. 5 of the Bills of Sale Act, 1878, and the mortgage also includes the newspaper premises. Mortgages of the plant separate from the premises, whether the plant is within the exceptions contained in sect. 5 or not, must always be registered.

41 & 42
Vict. c. 31.

Another point with regard to mortgages of newspapers may just be mentioned. If the owner of a share of a newspaper mortgages his share, the mortgagee takes that share subject to all equities existing between the mortgagor and the other owners of the newspaper. Further, if the mortgagee allows the other owners to incur expenses in carrying on the newspaper after the mortgage, he can only claim the value of the share and profits after satisfying every claim which the other owners may have for expenses incurred, and also for interest on their capital used by them in carrying on the paper (*Kelly v. Hutton*). In fact co-owners of a newspaper are regarded as partners in an undertaking, and each one of them and his assignee takes subject to the partnership accounts.

37 L. J.
Ch. 917.
(1868.)

JOINT OWNERSHIP OF NEWSPAPERS.—It is to be observed that what is generally meant by the "property" in a newspaper consists of two distinct things. It con-

25 & 26
 Vict. c. 89,
 s. 4.

sists first of all of the right to publish the given newspaper, and secondly, of the business of printing and publishing it. The first is property in the strict sense, and can be divided among any number of joint owners. The second is a commercial undertaking, and as such would appear to come within the provisions of the Companies Act, 1862. By that statute there cannot be more than twenty partners in any business. If there are more they must register themselves as a joint stock company. When, therefore, there are more than twenty persons interested in the proprietorship of a newspaper, and it is not desirable to make it a joint stock undertaking, one of two courses should be adopted. Either the whole property and business should be vested in trustees to manage for the benefit of the persons interested or the property in the newspaper should be separated from the business of printing and publishing it.

Joint ownership of newspapers not infrequently leads to disagreements and complications, more especially when individual members of the partnership are interested in newspapers not belonging to the partnership. In such cases there is a strong temptation on the individual owner to use for the benefit of his newspaper matter obtained at the expense of the partnership. This the Court on the application of any member of the partnership will restrain.

1 Sim. &
 St. 124.
 (1823.)

In *Glassington v. Thwaites*, A. B. and C. were owners of the *Morning Herald*. A. and B. were also owners of the *English Chronicle*, an evening paper, and those two, being a majority of the partners who owned the *Morning Herald*, agreed to use matter obtained at the cost of the *Morning Herald* for the *English Chronicle*. C., who was not interested in the *English Chronicle*, applied to the Court to restrain them from doing so. The Court, on the ground that no partner

is entitled to carry on for his own benefit any business in rivalry with the firm to which he belongs, granted the injunction asked for.

A second point on which disagreements and misunderstandings are common, and which also arose in the case of *Glassington v. Thwaites*, is as to the right of one newspaper owned by one or several partners to use the premises and type of another newspaper owned by a partnership of which this person or persons are members. Such a right can only be obtained by express agreement. No length of user can entitle one person to use the personal property of another. This will appear from the following cases.

In *Glassington v. Thwaites*, before referred to, the plaintiff *Supra.* desired the defendants to be restrained from using the type of the *Morning Herald* to print the *English Chronicle*. It appeared, however, that there was an express agreement between the owners of the *Morning Herald* and the owners of the *English Chronicle*, by which the latter, in consideration of an annual payment of £250, were to be entitled to use the type of the *Morning Herald*. The plaintiff's application was refused.

In *Platt v. Walter*, which has already been cited, the plaintiffs were part owners of the *Evening Mail*, and the defendants part owners of the *Evening Mail* and owners of the *Times*. Both the *Times* and the *Evening Mail* had originally belonged to a Mr. Walter, from whose son the plaintiffs had bought their share of the *Evening Mail*. Ever since the papers were first published, the *Evening Mail* had been printed with the type of the *Times*, and published on its premises, but there was no express agreement that this should continue. Disagreements having arisen, the owners of the *Times* refused to allow the *Evening Mail* to be printed with the *Times* type. The plaintiffs thereupon applied for an injunction to restrain them from preventing this. The claim for the injunction was based on long user. Vice-Chancellor Stuart refused the injunction. On appeal Lord Chelmsford,

17 L. T.
N. S. 159.
(1867.)
See p. 30.

L.C., affirmed the decision. His lordship pointed out that the plaintiffs had no legal property in the type of the *Times*, that user, however long continued, could not establish such a servitude over personal property, nor could even an express agreement, which would only bind those who were parties to it, and would lapse on their deaths. The circumstances disclosed a mere working arrangement which was terminable at the pleasure of either party to it.

CONTRACTS OF PROPRIETOR WITH THIRD PERSONS.—

In the chapter on registration we have pointed out that the fact that a certain person is registered as owner of a newspaper, is only *primâ facie* evidence that he is the owner, and that if he can shew that he is not the owner he can free himself from all the liability of ownership. This is to be remembered when we come to consider contracts made for services or materials on account of the newspaper. Such contracts, whether made by himself or his duly authorized agents, bind the real owner; and if the registered owner be not the real owner, they do not bind him unless it can be shewn that the plaintiff was induced to enter into the contract by the registered owner permitting himself to be held forth as real owner (*Holcroft v. Huggins and another*).

2 C. B. 488.
(1848.)

CONTRACTS WITH STAFF.—The contracts between the proprietor and members of the staff of a newspaper are personal contracts on the part of the latter, and therefore cannot be specifically enforced: (*Clarke v. Price*). As a general rule, if an employé refuses to carry out the contract, the proprietor's only remedy lies in an action for damages. Sometimes, however, the proprietor has a further and supplementary remedy. If by the terms of the contract the employé was to give his time exclus-

2 Wils.
Ch. Cas.
157.
(1819.)

ively to the service of the newspaper, then, on his throwing up his employment without due notice, or before the expiration of the term for which he was engaged, the proprietor, though he could not have the contract specifically performed, might yet get an injunction to restrain the employé from giving his services to another newspaper (*Lumley v. Wagner*).

1 D. G. M.
& G. 604.
(1852.)

NOTICE TO LEAVE.—The length of notice to leave to which a proprietor is entitled as against an employé, and conversely to which an employé is entitled as against the proprietor, primarily depends on the express terms of the agreement between them. If, however, there is no written agreement, or if the agreement does not fix the time of notice, it is then determined by the custom of the trade. What the custom of the trade is, is a point which must in each case be proved by evidence and found by the jury. Cases are referred to by Mr. Powell in his work on the Law relating to Printers, on the authority of the *Printers' Register*, in which an editor was awarded, in lieu of proper notice, six months' salary (*Hollings v. Robinson*, 1884), and four months' salary (*Hunter v. Henchmann and Darken*, 1883); a sub-editor, three months' salary (*Mitchell v. Liverpool Daily Mail*, 1882); and a police court reporter, one month's salary (*Griffin v. Howe*, 1878). See also the recent case of *Howard v. Galignani*, in which, under peculiar circumstances, an editor was found entitled to only three months' salary in lieu of notice. But in the absence of properly authenticated reports these references may be misleading, especially in face of the important cases of *Baxter v. Nurse* and *Holcroft v. Barber*. In these cases it was proved to the satisfaction of the Court

Times, 6th
Dec. 1890.

7 A. & E.
177.
(1837.)

that in the absence of express agreement to the contrary, the usage at that time was that the engagements of editors, sub-editors, and other persons who are regularly employed on a newspaper were for a year. The time and mode of payment of the salary are immaterial (*Williams v. Byrne*), so that the fact that salaries on the press are usually paid weekly does not disprove the usage as laid down in the above cases. In instances where there is a clear custom to the contrary, as in the case of parliamentary reporters, who are now generally engaged for the session, or of police court and other "outside" reporters, the doctrine of yearly hiring will not of course hold.

1 C. & K.
10.
(1843.)

In *Baxter v. Nurse* the law was laid down by Tindal, C.J., to the jury as follows: "The general rule of law is that, where there is nothing to contradict it, if a person engages another upon a service that is in its nature a lasting and enduring service, the engagement is for a year; but the law always looks at the nature of the contract, and therefore the plaintiff has in this case adduced a considerable body of evidence to shew that in the case of editors, sub-editors, reporters, and other persons regularly employed on newspapers, it is always understood and acted upon by all parties, and the general usage is for the engagement to be for a whole year." It appeared that the plaintiff had only acted as editor for three weeks when he was dismissed for misconduct, and further, that the paper was a new venture, and that its existence throughout the year was doubtful. The jury in these circumstances found for the defendant. On a motion for a new trial on the ground of misdirection, a full Court ruled that the peculiar circumstances of the case had been rightly left to the jury. "The observation," said the Chief Justice, "was not an improper one which was made by defendant's counsel (Serjeant Talfourd) and repeated by me, whether this which may be an ordinary and possibly a useful rule of law in the generality of cases is a rule also in the case of a publication

13 L. J.
C. P. 82.
(1844.)

newly commenced and which it may be uncertain whether or not it will be carried on for a year."

In *Holcroft v. Barber & Watson*, Wightman, J., said: "It is proved by a number of gentlemen who have been employed both as editors and sub-editors that the custom is that a person who is upon the regular employment of the newspaper press is employed for a year unless it be otherwise expressed. . . . The witnesses all agree that it is not so much whether the person is called editor, sub-editor, or reporter, but that if the person be permanently employed (not occasionally only) to supply a particular department of a newspaper, as, for instance, the leading article or reports of the parliamentary debates, and no more be said, that is an engagement for a year; and if the engagement be for a year that engagement is reciprocally binding on both parties."

¹ C. & K. 8.
(1843.)

A further point to be noticed in this connection is as to the measure of the damages to which the proprietor or the employé is entitled, upon the employé leaving or being discharged without due notice. If the employé is discharged without due notice, the utmost which he can recover from the employer is the amount of salary which would have accrued to him during the period of the notice to which he was entitled, and if the proprietor pays him on dismissal these wages in lieu of notice, then he has suffered no wrong and has no right of action. It is otherwise when the employé leaves without notice. Then the measure of damages is the amount of injury suffered by the proprietor through the employé's breach of contract. Thus, if an editor, without warning, threw up his post, and in consequence the newspaper failed to appear for several days, he might find himself liable to damages far beyond the amount of any damages he could have recovered from the proprietor, had the proprietor dismissed him without notice.

POSITION OF EDITOR.—The editor is the agent of the newspaper proprietor, and as such is entitled to bind the proprietor by acts done within the scope of his authority. What acts will be held by the Courts to be within the scope of his authority depends, as a rule, upon the extent of the authority expressly delegated to him. The editor, as editor, can scarcely be said to have any fixed legal status. This arises naturally from the fact that in practice his duties and powers vary with each individual case. In one newspaper he represents the proprietor in everything; he has full management and control of all departments. Here his authority to bind the proprietor is co-extensive with his powers. In another case his duties may be confined to the literary supervision of the paper, and here, clearly, his authority to bind the proprietor is confined to the department which he directs.

Generally speaking, the question whether any act done by an editor is within the scope of his authority, and so binding upon the proprietor, can only be decided by a reference to the facts of each particular case.

One thing, however, which the Courts hold in every instance to be within the scope of an editor's authority, is the insertion of matter in the newspaper; and so the proprietor is invariably held civilly—and formerly criminally also—responsible for all illegal matter inserted by the editor, whether that matter was inserted with his knowledge or not. Moreover, if an editor inserts illegal matter without the proprietor's knowledge, and in consequence the proprietor is imprisoned or mulcted in damages, the proprietor has no remedy over against the editor. The leading case upon this point is *Colburn v. Patmore*.

1 Cr. Mens.
& Ros. 73.
(1834.)

There the plaintiff was proprietor, and the defendant editor, of the *Court Journal*. Without the knowledge, leave, or authority of the plaintiff, the defendant inserted a libel in the *Court Journal*, in consequence of which the plaintiff was convicted of libel and fined £100. The plaintiff thereupon brought an action against the defendant, which resulted in a verdict for the plaintiff, with £193 damages. After verdict, however, judgment was arrested on the ground that it did not appear that the damages which the plaintiff had suffered were connected with the defendant's act, the plaintiff having been fined for "printing and publishing" the libel, while the act alleged against the defendant was inserting it in the *Court Journal* and publishing it. Though the decision turned on this point, the judges took occasion to declare that had it not been raised, still the plaintiff could not have recovered from the defendant. Lord Lyndhurst, C.B., said: "I know of no case in which a person who has committed an act, declared by the law to be criminal, has been permitted to recover compensation against a person who has acted jointly with him in the commission of the crime."

Letters and MSS. which come into the hands of the editor, as agent of the proprietor, are the property of the proprietor, and if the editor after ceasing to be editor attempts to use them for his own advantage the Court will grant an injunction to restrain him, and will also compel him to hand them over to his former employer.

In *Hogg v. Kirby*, the defendant had been editor of a periodical of which the plaintiff was the owner. During the period of his editorship he received various letters from correspondents, some of which he did not publish. After the termination of his engagement with the plaintiff, he himself started a new paper and began publishing in it the letters which he had received as editor of the plaintiff's paper, and which he had not published in it. The Court granted an injunction to restrain him from doing so, and ordered him to deliver up all such letters to the plaintiff.

8 Vesey,
215.
(1803.)

It follows that in the absence of express agreement to that effect the editor has no power, as against the proprietor, to decide what shall and what shall not go into the newspaper. Not only so, but it would appear that, even in the case of an express agreement that the whole managership of the newspaper shall be in the editor's hands, the Court will not grant an injunction to restrain the proprietor from taking the management out of the editor's hands. Such an act on the part of the proprietor is of course a breach of contract for which the editor is entitled to damages.

3 L. T.
N. S. 225.
(1860.)

In *Crookes v. Petter*, already referred to, the plaintiff and defendant had agreed that the defendant should start a newspaper, of which the plaintiff should be editor for a certain number of years. The plaintiff's salary was to be determined by the number of copies sold. After some time disputes arose between the plaintiff and defendant, in consequence of which the defendant removed from the front page of the paper the words "Edited by W. Crookes, F.C.S.," and also practically withdrew the control of the newspaper from the plaintiff's hands. The plaintiff thereupon applied to the Court for an injunction to restrain the defendant from interfering with him in the editorial conduct of the paper. The application was refused, and the plaintiff left to his remedy in damages for breach of contract.

It may be observed that where a person not on the staff of a newspaper sends a manuscript to the editor without any invitation either to himself personally or to the public generally to do so, he sends it at his own risk. There is no obligation on the part of the newspaper proprietor or editor to preserve it, and if it be lost the sender cannot recover its value.

EDITOR'S RIGHT TO ALTER.—A point of interest to

authors is as to the right of the editor of a newspaper to alter contributions. The existence, or at any rate, the extent, of this right would appear to depend largely on whether the contributions in question are anonymous or signed.

In the case of anonymous contributions the editor's right to alter may be regarded as practically unlimited. The author suffers no wrong by such alteration. He is not represented as holding opinions which he detests, nor is his reputation for literary skill in any way compromised, however inept or ill-advised the alterations may be. The custom of the trade would be considered by the Courts as binding on all parties in such a case, and by it the editor is allowed a very free hand. The writer's contribution is a contribution to a paper, with the tone and tendency of which he may be assumed to be familiar, and it is accepted on that implied understanding.

The case of *Cox v. Cox* bears upon this point. Here the plaintiff was a barrister, who was engaged by the defendant, who was a house agent, to revise a work which the latter was publishing for the benefit of intending tenants, and also to add a short notice on the legal points involved. The plaintiff wrote a sort of treatise on the law of Landlord and Tenant, and of Real Property which the defendant objected to on the ground of size. The plaintiff declined to alter it, and insisted that it should be printed entire or not at all. The defendant then himself abridged the plaintiff's work and printed the book. The plaintiff applied for an injunction to restrain publication of the work with any material alteration, and also until defendant had paid plaintiff. The injunction was refused. Wood, V.-C., in delivering judgment said: "A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form?—how far, in a case in which

11 Hare,
118.
(1853.)

the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and henceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which has been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required in such a form as to enable the defendant to publish it as his own."

The case of signed contributions is obviously different. Here the nature of the opinions advanced and the literary form of the article go to the credit or discredit of the acknowledged writer, and any alterations that are made may affect his character for honesty and consistency or, in an extreme case, his literary reputation. There is, however, very little judicial authority on the subject to guide us. No doubt the editor is entitled to omit illegal matter. The publication of this would be an offence, and no person can be required to break the law even by express agreement, still less by an implied understanding. His right to delete matter not absolutely illegal, but which he may for various reasons regard as objectionable or offensive, would also appear to be pretty extensive. The alteration of a signed letter or article is, however, always a very delicate matter, and in cases of doubt or difficulty the only safety lies in total omission. The deletion of matter or, still more, the insertion of new matter may have the effect of distorting a writer's opinions or argument or of making him ridiculous. In such a case he could obtain an injunction to restrain further publication,

and probably also he could have his remedy in an action for libel.

A case somewhat similar to that of a writer's contributions being changed so as to make him appear ridiculous or injure his reputation occurred in *Archbold v. Sweet*. There the plaintiff was a law author who had written a book on the Law of Pleading and Evidence in Criminal Cases, the copyright of which had been acquired by the defendant who brought out a new edition edited by another person, but not stated to be so edited. In this edition occurred several serious errors, such as were likely to compromise the plaintiff's reputation as an author. *Held*, that this amounted to a libel on the plaintiff.

5 C. & P.
219.
(1832.)

Another case bearing upon the question of alterations and additions is that of *Gilbert v. Boosey & Co*. Here the application was for an injunction to restrain the defendants from advertising the plaintiff's name in connection with the representation of an opera called "Les Brigands." The application was based on the fact that the defendants had inserted into Mr. Gilbert's version of the libretto two songs which were not written by him, and had omitted a solo by him. Denman, J., in delivering judgment, said: "He considered that what had been done did not justify the granting of an interlocutory injunction unless it had been done in bad faith, or the acts had been of such a kind as to injure the reputation of the plaintiff. If the songs had been scandalous or indecent, there would have been a strong ground for the Court interfering. There was nothing of the kind here, only advertisements attributing to Mr. Gilbert what was not his work, but only to a very small extent . . . He considered it too strong a measure to hamper this performance by an interlocutory injunction when no substantial injury had been done, and no substantial injury was likely to be done to Mr. Gilbert. There would be no order on the motion, except that the costs be costs in the action." On appeal this decision was substantially affirmed.

Times, 21st
Sept., 1889.
Law Times,
28th Sept.,
1889.

FOREIGN LAW.—It is worth noting, as throwing light on this point, that the difficulty in so far as it relates to "letters

Loi du
29 Juillet,
1881;
art. 13.

Cass. Ch.
Crim., 17
Août, 1883.

Pressgesetz
vom 7 Mai,
1883.

to the editor" is expressly dealt with both in the French and the German law. In France, as we shall see later on, the editor is bound to publish a reply sent in by any one "referred" to in his paper, but it has been repeatedly held that he may refuse to insert the letter if it contains anything illegal, offensive, or insulting. A few words from one of the most important and recent of these decisions may be quoted.

*"La réponse ne doit contenir rien de contraire à l'honneur et à la considération de celui à qui elle est adressée. Dans le cas contraire le refus est légitime, car le journaliste ne saurait être tenu de diviser et de scinder la réponse qui lui est adressée pour ne publier que les parties qui * * * * ne dépassent pas l'exercice du droit."* It will be seen that this confers no right

on the editor to alter or omit the objectionable portions of the letter. But it does not expressly forbid him to do so. The German law, however, is precise on this point. The editor is "bound" to publish the letter, "without insertions or omissions," but only in case it contains no illegal matter: *"sofern die Berichtigung keinen strafbaren Inhalt hat."* The editor may reject but he must not tamper with, it in any way.

PART II.

CHAPTER I.

LIBEL AS A CIVIL INJURY.

THE first difficulty met with in approaching the subject of libel is that of definition. In his evidence before a Committee of the House of Lords which sat in 1843 to inquire into the law relating to libel and defamation, Lord Lyndhurst declared: "I have never yet seen, nor been able myself to hit upon, anything like a definition of libel, and I cannot help thinking that the difficulty is not accidental, but essentially inherent in the nature of the subject-matter."

No doubt, so far as defamatory libel is concerned, the difficulty of definition is inherent. But as regards libel generally, the difficulty is aggravated by two circumstances. The first of these is the widely different nature of the matters which are all ranked under the one general description of "libel." What is there in common between a defamatory and a blasphemous libel, save that both must be written and that the publication of both is illegal? Accordingly, any definition to include both must confine itself to these two characteristics; in other words, it must define libel as written matter, the publication of which is illegal—a definition which defines nothing.

The second difficulty arises from the different senses in which the word libel is used. Sometimes it is used to describe matter on the face of it defamatory, or on the face of it blasphemous, indecent, or seditious. This is the sense in which it is used when, in a civil action, an article is pronounced to be unquestionably libellous but also unquestionably true, or unquestionably absolutely privileged. Sometimes, on the other hand, "libel" is used to denote the indictable offence or actionable wrong arising from the publishing of defamatory, blasphemous, indecent, or seditious matter without lawful justification or excuse. That is the case when people talk of a person being convicted of libel. This confusion of expression has led to more confusion of thought on the subject than anything else. It is impossible to avoid using the word in both these meanings, but in this work we intend, as far as possible, when there is any danger of confusion, to distinctly specify in which sense the word is used.

Blackstone,
4 Com. c. 2.

Using the word in the sense of the offence or wrong arising from the publication of libellous matter, we shall first consider defamatory libel. It has always been an offence at common law "maliciously" to hold any person up to "hatred, contempt, or ridicule." When this malicious defamation is written, printed, and published, without lawful justification or excuse, it becomes a libel. So far all is simple enough; but when we attempt to define in strict terms "malice" and "defamation," the difficulties are endless. From the nature of the case it is inevitable that this should be so, for the question of "libel" or "no libel" has from time to time been so inextricably mixed up with our social, religious, and political prejudices, that the decisions alike of judges

and juries have been influenced by them. It follows that while the form of words defining the offence may have remained very much the same, the nature of the offence has varied.

In the first place, it has to be noted that the nature of the libel itself differs considerably according as it is regarded as a public Offence or a private Wrong. More than one attempt has been made within comparatively recent times to draw up authoritative definitions of one or other of these classes. In 1879, the committee of Judges appointed under the presidency of Lord Blackburn, for the purpose of preparing a draft Criminal Code, agreed upon the following definition of libel from the point of view of criminal law :—

“Matter published without legal justification or excuse, designed to insult the person to whom it is published, or calculated to injure the reputation of any person by exposing him to hatred, contempt, or ridicule.

“Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.”

It did not come within the scope of the commission of the Judges in 1879 to suggest a definition of the class of libel which is the subject of a Civil action, but for purposes of comparison we subjoin that given by the same distinguished Judge (Lord Blackburn) in a leading case (*Capital and Counties Bank v. Henty*) tried three years afterwards :—

“A written statement, published without lawful justification or excuse, calculated to convey to those to whom it is published an imputation on the plaintiffs injurious

7 App. Cas.
741.
(1882.)

to them in their trade, or holding them up to hatred, contempt, or ridicule."

It is obvious that the words "written statement" in this definition must, for general application, be interpreted in the sense of the second paragraph of the definition of criminal libel given above. The point of importance as regards the newspaper press is that the libel may be embodied in a sketch, cartoon, or caricature, whether accompanied by letterpress or not.

The Legislature of the State of New York has recently (1882) adopted a somewhat stringently worded definition of libel. As the authorities on which it is based are practically the same in the two countries, the definition is worth quoting, although of course it has no binding effect in the English Courts. A criminal libel is defined (Penal Code, c. viii., § 242) as—

"A malicious publication by writing, printing, picture, effigy, sign, or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule, or obloquy; or which causes, or tends to cause, any person to be shunned or avoided; or which has a tendency to injure any person or corporation or association of persons in his or their business or occupation."

In the Civil Code for the same State, which was drawn up by the commission appointed for that purpose, and which has more than once passed both Houses, but has not yet received the signature of the Governor, the definition of a libel is (§ 29):—

"A false and unprivileged publication by writing, printing, picture, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy; or which causes him to be shunned

or avoided ; or which has a tendency to injure him in his occupation."

Although criminal libel must occupy the first place both historically and logically in any examination of the subject, yet in modern English newspaper law it has, for a variety of reasons, especially since recent legislation, assumed an altogether secondary position. We shall, therefore, take up first the defamatory libel from the point of view of civil as opposed to criminal law.

WHAT IS A LIBEL?—It will be seen from what has been said that to support an action for libel, the matter complained of must satisfy the following conditions :—

It must be written, or printed, or otherwise expressed in some more or less permanent form.

It must be published.

It must convey some imputation upon the plaintiff's character ; or tend to injure him in his trade or occupation ; or hold him up to hatred, contempt, or ridicule.

It must be published maliciously, that is to say, without lawful justification or excuse.

The first two heads need not detain us long. It is the necessary object of a newspaper to print and to publish matter, so that both conditions may in most cases be taken for granted. But let us consider each proposition for a moment.

PERMANENT FORM.

The first condition is, that it must be written, printed, or otherwise expressed in some more or less permanent form.

This permanence, as opposed to the transient nature of spoken words, is of the essence of a libel ; it is that which distinguishes it from slander. Provided this per-

manence is present, it does not matter by what means it may be produced—whether by writing, drawing, or printing, or by all three combined.

An article which would not otherwise be libellous may become so when taken in conjunction with a caricature or sketch appearing in the same paper.

7 C. & P.
369.
(1835.)

In *Watts v. Fraser & Moyes* the libel consisted of an article accompanied by a lithographed print of the plaintiff which it was alleged was intended to hold him up to ridicule.

PUBLICATION.

The second condition is, that it must be published.

In civil law publishing a libel means communicating it in any way to a person other than the individual libelled.

It may be well to point out that not only are the printing and original issue of a newspaper publication of the libel, but every subsequent sale of a copy of the newspaper containing the libel, no matter how long it may be after the original issue, constitutes a fresh publication on the part of the person selling it. The effect of this rule sometimes is to make a libel once more actionable after the lapse of more than six years since its first publication, when in the ordinary course the Statute of Limitations would act as a bar.

4 Q. B. 185.
(1849.)

In the case of the *Duke of Brunswick v. Harmer*, the defendant, who was proprietor of the *Weekly Dispatch*, had, on 19th September, 1830, published in that newspaper libellous matter regarding the plaintiff. Seventeen years afterwards, on 26th September, 1847, an agent of the plaintiff, by the plaintiff's direction, went to the office of the *Weekly Dispatch*, and there bought a copy of the issue of the 19th September, 1830, which copy he afterwards delivered to the plaintiff.

Action was brought in April, 1848. The defendant pleaded the Statute of Limitations—that is, that the libel was not published by him within six years preceding action brought; but the Court held that the sale of the paper in September 1847, was a sufficient publication to take the case out of the statute, and further, that the jury, in estimating the damages, should not be directed by the judge to take into consideration only those resulting from that particular publication. The jury gave £500.

WHO IS RESPONSIBLE FOR PUBLICATION. — Although the fact of publication is not likely to give rise to much difficulty in the case of a newspaper, it is not always easy to decide on the person responsible for any particular publication. From the numerous decisions on this point, it would appear that there are practically three classes of persons who may be made amenable.

The first class consists of those who, on the principle of *respondere superior*, are responsible for the acts of their subordinates in editing, printing, and publishing the newspaper. This class includes—

- (1.) The Proprietor.
- (2.) The Printer.
- (3.) The Publisher.

The second class consists of those who are or are presumed to be parties to the publication of the illegal matter until the contrary is shewn. This class includes—

- (1.) The Author of the Libel.
- (2.) The Editor of the Newspaper.
- (3.) The Vendor of the Newspaper.

The third class consists of those who may be shewn to have actually taken part in the publication. This class includes—

- (1.) The Sub-Editor of the Newspaper.
- (2.) The Compositors.

- (3.) The Readers and others through whose hands the libel may have passed.

PROPRIETOR, &C.—With regard to the first of these classes; the proprietor, printer, and publisher are *ipso facto* jointly and severally responsible in damages for every libel appearing in the newspaper, whether they were aware of its insertion or not. When we come to consider the criminal law of libel, it will be seen that the rule there is somewhat different.

Supra,
p. 84.

In *Watts v. Fraser & Moyes* the facts were peculiar. The plaintiff brought an action against Fraser, the editor, and Moyes, the printer of "Fraser's Magazine," for two libels on him contained in that journal. One of the libels was a lithographed print. This print was executed by a Mr. Hulmandel, and the defendant Moyes had nothing to do with the striking it off. It was, however, referred to in the letter-press printed by Moyes. Lord Denman, C.J., held that Moyes was liable for it, and on motion for a new trial, on the ground that this constituted a misdirection, the rule was refused.

5 T. L. R.
721.
(1889.)

In the case *In re The American Exchange in Europe, American Exchange in Europe, Limited v. Gillig and Others*, the printer, whose name appeared on the imprint of the London edition of the *New York Herald*, was proceeded against for contempt of court in publishing matter referring to a certain action then pending. Though affidavits were filed shewing that he was really only foreman printer, paid by a weekly salary, and without any control whatever over the conduct of the paper, he was held liable for matter appearing in it. The principle of this case would undoubtedly apply to the publication of libellous matter.

7 C. & P.
626.
(1835.)
7 C. & P.
369.
(1835.)

EDITOR, &C.—With regard to the second class, the author, the editor, and the vendor, are, *primâ facie*, liable (*Bond v. Douglas*; *Watts v. Fraser & Moyes*), and the only way any one of them can clear himself is by proving that

he was not wilfully or through negligence a party to the publication. For instance, if the author can shew that the libel, though written by him, was not published with his consent or through his default, then he will not be liable for it (see Odgers on Libel and Slander, 2nd ed. pp. 155 and 160). In the same way, if the editor can shew that he was not in actual charge of the newspaper when the libel appeared, and that, consequently, its appearance was not due to his wish or negligence, there is little doubt that he would not be held liable. Again, if the vendor can shew that when he sold the paper, he did so not knowing and having no reason to suspect that it contained or was of such a character as to be likely to contain a libel, he will not be liable (*Emmens v. Pottle*).

Infra,
p. 89.

In this connection, it is important to remember that although, as we have said, it is of the essence of a libel that it should appear in writing, the term "author" includes not merely the writer of the libel, but also the inspirer of it. Verbal statements accompanied by a request to the reporters to notice them, and even unaccompanied by such a request, if uttered with the intention that they should be published, will make the speaker liable in libel. The recent rapid spread of "interviewing" in newspapers makes this rule of immense importance, since it enables the originator of a slander to be proceeded against, and also because occasionally, in cases of privilege, where an action would not lie against the newspaper proprietor, through want of evidence of actual malice on his part, it may be possible to prove malice against the author. It may be added, that where the libel appears anonymously, the editor cannot be compelled to disclose the writer's name.

Infra,
p. 146.

15 L. J.
Q. B. 206.
(1846.)

In *R. v. Cooper* the defendant was indicted for publishing a libel of and concerning the prosecutor, one Joshua King, rector of Woodchurch. The libel consisted of an article in the *Liverpool Chronicle*, headed "Strange Doings at Woodchurch. The Rev. Joshua King again"; and containing a ludicrous account of the burning in effigy of Mr. King and his brother by the tenants of Sir M. S., for poisoning foxes on Sir M. S.'s estate. At the trial the chief witness for the prosecution was the editor of the *Liverpool Chronicle*, and from his evidence it appeared that the defendant, on meeting witness by appointment, had asked him "to shew up" the Rev. Mr. King, and had given him an account of the burning in effigy. A week later he complained that the article had not yet appeared. The editor admitted that he had heard of the hanging up in effigy before defendant told him of it. It was contended at the trial that as the article was neither written nor dictated by the defendant, and as the facts had been learnt from other sources as well as from him, there was no publication as against defendant. But the Court held otherwise. On motion for a new trial, Lord Denman, C.J., said: "Suppose there were a person whose powers of sarcastic penmanship were well known, and another person were to come to him and say, 'I wish you would write a libel on A. B.,' the person so employing the penman takes his chance of whatever may be written, and, if the matter written were libellous, would be answerable."

It may also be mentioned that there is no legal definition of "editor;" and, as has been already pointed out, the position and powers of editors vary enormously. Whether the so-called editor of any paper holds such a position as to make him responsible for everything appearing in the newspaper is, it is submitted, a question of fact. For instance, where there is a literary and a political editor of the same paper, it would be preposterous to hold the political editor responsible for matter inserted by the literary editor and *vice versa*. It is only where the editor is general editor that he can be

held responsible, and then he is only responsible when actually in charge of the paper.

SUB-EDITOR, &c.—With regard to the third class, they are not liable until it is shewn that they were parties in fact or by negligence to the publication of the libellous matter. Thus in order that an action may lie against the sub-editor it is necessary to shew that he actually sub-edited, or that it was his duty to sub-edit, that part of the newspaper which contained the libellous matter. In the same way it would be necessary to shew that the reader actually read or that it was his duty to correct the proof of the libellous matter, and that the compositor actually “set it up” in order that actions might lie against them. When this is shewn the members of the third class are placed in the position of those in the second class, that is they are *primâ facie* liable for the libel, and can only clear themselves by shewing some ground on which the Court will relieve them of their responsibility. The only way in which this can be done is by convincing the Court that they were not conscious of the nature of the matter when they sub-edited, corrected, or set it up.

In the leading case of *Emmens v. Pottle & Co.* the facts were as follows: The defendants were newsvendors, carrying on business in the city of London. In the course of their business they sold a newspaper called *Money*. A copy of this paper contained a libel upon the plaintiff, who brought an action against Pottle & Co. The defendants pleaded that they sold the paper in the ordinary course of their business, and without any knowledge of its contents. The plaintiff in his reply contended that this amounted to a publication, and made them responsible at law for the libel.

16 Q. B. D.
354.
(1885.)

The action was tried before Mr. Justice Wills; and in answer to questions put by him, the jury found “that the

defendants did not, nor did either of them, know that the newspapers, at the time they sold them, contained libels on the plaintiff; that it was not by negligence on the defendants' part that they did not know there was any libel in the newspapers; and that the defendants did not know that the newspaper was of such a character that it was likely to contain libellous matter, nor ought they to have known so." On this finding the judge gave judgment for the defendants, and from this judgment the plaintiff appealed. The Court of Appeal dismissed the appeal.

In delivering judgment, Lord Esher, M.R., said: "I agree that the defendants are *prima facie* liable. They have handed to other people a newspaper in which there is a libel on the plaintiff. I am inclined to think that this called upon the defendants to shew some circumstances which absolve them from liability, not by way of privilege, but facts which shew that they did not publish the libel. We must consider what the position of the defendants was. The proprietor of a newspaper, who publishes the libel by his servants, is the publisher of it, and he is liable for the acts of his servants. The printer of the paper prints it by his servants, and therefore he is liable for a libel contained in it. But the defendants did not compose the libel on the plaintiff; they did not write it or print it; they only disseminated that which contained the libel. The question is, whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. That, I think, cannot be doubted. But here, upon the findings of the jury, we must take it that the defendants did not know that the paper contained a libel. I am not prepared to say that it would be sufficient for them to shew that they did not know of the particular libel. But the findings of the jury make it clear that the defendants did not publish the libel. Taking the view of the jury to be right, that the defendants did not know that the paper was likely to contain a libel, and still more, that they ought not to have known this, which must mean that they ought not to have known it, having used reasonable care—the case is reduced to this,

that the defendants were innocent disseminators of a thing which they were not bound to know was likely to contain a libel. That being so, I think the defendants are not liable for the libel" (see *Ridgway v. Smith*, p. 149).

In *Johnston v. The Christian Million Publishing Co. (Limited)* the rule in *Emmens v. Pottle* was carried so far as to protect the printers and compositors of a libel. Here the action was brought against the *Christian Million* Publishing Company, who set up the pamphlet containing the libel, Messrs. Sears & Co., who machined it, and others. The defendants denied publication. The plaintiff did not go into the box to disprove the libel, and the evidence only shewed that one copy of the pamphlet had reached the outside world. The secretary of the *Christian Million* Publishing Company admitted that the company had set up the libel, but pointed out that their readers probably did not get the proof in consecutive galleys. He denied that he had read the pamphlet, and said that the company employed no one to read pamphlets to see if they contained libels. On this Huddleston, B., held that there was evidence of publication to go to the jury. In summing up, his lordship read to the jury Lord Esher's judgment in *Emmens v. Pottle*, and left it to them to say if this case came within the principle there laid down. The jury found for the defendants. A motion for a new trial was afterwards made on the ground of misdirection, but was refused by the Divisional Court.

Times,
Feb. 7,
1890.

The members of all three classes may be held responsible in damages, no matter in what form the libel appeared; that is no matter whether it was as an item of news, or in a leading article, or as a sketch or cartoon, or in a signed or anonymous letter to the editor, or as an advertisement.

In *Tidman v. Ainslie* the defendant published a pamphlet intended to vindicate Mr. and Mrs. Davies from charges brought against them by the officers of the London Missionary Society. In this pamphlet was reproduced a letter from the said Mr. and Mrs. Davies to the directors of the London Missionary Society. Action was brought by plaintiff, who

10 Exch.
63.
(1854.)

was secretary to the society, for statements contained in that letter. *Held*, that the action lay, though the statements had been published before, though the name of a third person was given in the pamphlet as authority for the statements, and though the defendant honestly believed the statements to be true.

1 F. & F.
567.
(1858.)

In *Harrison v. Pearce* the defendant was publisher of the *Sheffield Daily Telegraph*. An advertisement had been inserted in that paper by the committee of the Letter-Press Printers' Society at Sheffield and signed by its president, W. Bingham. This advertisement contained statements reflecting on the plaintiff, who was owner of another local newspaper. Though an action was pending against Bingham and another person, it was held that one lay against the defendant, and that the jury in estimating the damages could not take into account the other actions on this latter point. As will be seen later, the rule has been modified by the Law of Libel Amendment Act, 1888.

MALICE.—It is not necessary that the matter should be published from a malicious motive or with an intention to injure the plaintiff. Evidence of actual malice, as this is called, is no doubt of great importance as affecting the amount of damages which the plaintiff should obtain; but in ordinary cases, where the defendant cannot claim privilege for his act, the absence of express or actual malice is no defence whatever. The whole question is, has the defendant published a statement reflecting on the plaintiff's character without lawful justification or excuse? If he has done so, no matter whether the publication was due to actual personal malice, or to inadvertence or misconception, he is equally liable to an action.

L. R. 10
C. P. 502.
(1875.)

In *Shepherd v. Whitaker*, the defendant was proprietor of a newspaper called the *Bookseller*. By a blunder in the arrangement of the Gazette notices a notice of the dissolution of partnership between plaintiff and one Yeomans was put under the heading, "First Meeting under the New Bank

ruptcy Act." Upon discovering the mistake the plaintiff took immediate steps to explain it and inserted in the next issue of the *Bookseller* an ample apology. The jury gave damages £50. On motion for new trial, on grounds, first, of no libel, second, of excessive damages, the Court refused the rule.

Since actual malice is not necessary in an ordinary action for libel—that is, where there is no privilege—an action will lie against a corporation. "Suppose that a corporation published a newspaper or printed books, and suppose that it was proved against them that a book so published had been read by an officer of the corporation in order to see whether it should be published or not, and that it contained a libel, an action lies there, because there is no question of actual malice or ill-will or motive" (*per* Lord Bramwell, *Abrath v. North Eastern Railway Co.*)

In this connection it may be mentioned that a corporation can sue for a libel affecting property, but not for one merely affecting reputation (*per* Day, J., *Mayor, &c., of Manchester v. Williams*).

11 App.
Cases, 254.
(1886.)

1 Q. B. 94.
(1891.)

MEANING OF WRITER.—What the defendant meant by his statement is of no importance, except as regards the amount of damages. The point is, what would the public generally understand him to mean? However innocent his intention may be, if his expressions were such as to lead people reading them to think that he intended to reflect on the plaintiff's character, he is liable to an action for libel.

In *Haire v. Wilson* the defendant was proprietor and publisher of the *Hull Advertiser and Exchange Gazette*. The plaintiff brought an action against him for libellous matter appearing in that paper. At the trial the judge left it to the jury to say whether the defendant intended to injure the plaintiff. *Held*, that this direction was wrong in law. Lord Tenterden, C.J., in delivering judgment, said: "If the judge

9 B. & C.
643.
(1829.)

thought the tendency of the publication injurious to the plaintiff, he ought to have told the jury it was actionable, and that the plaintiff was entitled to a verdict."

7 App.
Cas. 772.
(1882.)

In the great case of *Capital and Counties Bank v. Henty* Lord Blackburn says: "The question is not whether the defendant intended to convey that (injurious) imputation; for if he, without excuse or justification, did what he knew or ought to have known was calculated to injure the plaintiff, he must (at least civilly) be responsible for the consequences, though his object might have been to injure another person than the plaintiff, or though he may have written in levity only. As was said in the opinion of the judges delivered in the House of Lords during the discussion of Fox's Bill, I think quite justly, no one can cast about firebrands and death, and then escape from being responsible by saying he was in sport."

Page 790.

In the same case Lord Bramwell says: "It is admitted on all hands that the common expression 'meaning' is incorrect and inadequate, for the question is not what the author of the alleged libel means, but what is the meaning of the words he has used; and more than that (for the words themselves may be harmless), if a libellous inference may be drawn from them, as a necessary or natural consequence, they are libellous."

IMPUTATION ON CHARACTER.

The third condition is that it must convey an imputation upon the plaintiff's character, or tend to injure him in his trade or occupation; or hold him up to hatred, contempt, or ridicule.

In order that any matter may be held to reflect on plaintiff's character, two things are necessary. The expressions used must be reasonably susceptible of a defamatory meaning, and they must be shewn to apply with certainty to the plaintiff.

DEFAMATION.—With regard to the question, when will expressions be considered reasonably susceptible of a defamatory meaning, the only answer that can be given

is, in words already cited, when they are "calculated to convey to those to whom they are published an imputation on the plaintiffs, injurious to them in their trade, or holding them up to hatred, contempt, or ridicule (per Lord Blackburn, *Capital and Counties Bank v. Henty*).

7 App.
Cas. 771.
(1882.)

In every case of alleged libel the defendant is entitled to have his whole statement placed before the Court: the plaintiff cannot take one or two isolated sentences which appear to bear a defamatory meaning, and pin the defendant to them alone. Text and context must be read together, and every expression used must be interpreted not separately, but in conjunction with what goes before and what comes after it.

In *Cooke v. Hughes* the action was for a libel contained in a pamphlet called "The Stafford Peerage, or the Impostor Unmasked." The pamphlet was a professed history of the life and adventures of the plaintiff, under a fictitious and libellous name, and it contained several distinct charges of crimes and opprobrious comments on those crimes. The plaintiff in his statement of claim set out various detached passages from the pamphlet. Counsel for the defendant claimed to have the whole pamphlet read on the ground that the plaintiff only set out the comments on the charges (which could not be proved) and not the charges themselves (which the defendant was prepared to prove and thus justify the comments). Abbott, L.C.J., held, that the defendant was entitled to have the whole pamphlet read. On the other passages being read, Scarlett, the defendant's counsel, without calling evidence, asked the jury for a verdict on the ground that, as the plaintiff had not complained of the grave charges in the passages newly read, they should be taken as true. If so, the plaintiff had no character to be injured, and was therefore not entitled to any damages. The jury returned a verdict for one farthing (cf. *Bembridge v. Latimer*, p. 136).

Ryan &
Moody,
112.
(1824.)

The words used must be taken to bear their ordinary meaning until evidence is given shewing that, in the

particular case, an unusual meaning was attached to them. For this purpose, evidence of the circumstances surrounding the publication of the libel—such as the position of the plaintiff, the relations between the plaintiff and the newspaper proprietor or editor (if known to those to whom the alleged libel was published)—may be given. In the same way evidence may be given to shew the meaning which should be attached to cant or slang words, or provincialisms.

18 L. J. Ex.
81.
(1848.)

Daines v. Hartley was a case of slander, but the principle recognized in it applies equally to libel. The case turned on a remark made with regard to certain bills against the house of which the plaintiff was a partner. The defendant had said, with regard to holder of these bills, "You must look out sharp that they are met by them." At the trial the plaintiff's counsel wished to ask the witness what he understood by these words, but the judge refused to allow the question to be put in that way. Counsel refused to alter it. On the jury returning a verdict for the defendant, the plaintiff moved for a new trial on the ground that this question was improperly disallowed. The Court refused a new trial. Pollock, C.B., in delivering judgment, pointed out that the plaintiff's counsel should have first asked if there was anything to prevent these words from conveying the meaning they would ordinarily convey? If the witness had answered in the affirmative and explained what it was that suggested the unusual meaning, then counsel might ask him what he understood by them. "If words are uttered or printed, the ordinary sense of those words is to be taken to be the meaning of the speaker or writer; still, no doubt, a foundation may be laid"—for shewing another meaning was to be attributed to them—"by shewing something else which has occurred; some other matter may be introduced, and then when that is introduced the witness may be asked with reference to that other matter, what was the sense in which he understood the words used."

It frequently happens that words *primâ facie* innocent

are capable of having a defamatory meaning attached to them by readers. In such cases the rule seems to be that, where there is anything in the circumstances or object of the publications which would suggest that the defamatory meaning was intended, the jury are justified in holding it to be a libel; but where there is nothing to support such a suggestion, the fact that a defamatory meaning might possibly be attached to the words or sentences is not sufficient to make them libellous.

The case of the *Capital and Counties Bank v. Henty*, already several times referred to, may be cited in proof of this. The facts there were as follows: The defendants were brewers in Chichester and they had been accustomed to accept cheques on the plaintiffs. In consequence of a disagreement with the plaintiffs' manager at Chichester, they issued a circular to their customers and tenants saying that henceforth they would not accept cheques on any branch of the plaintiffs' bank. Following the issue of this circular there was a run on the bank, to the serious injury of the plaintiffs. On action brought by plaintiffs for libel, the innuendo set out that the circular imputed to them insolvency. Defendants denied this. On trial no evidence connecting the language of the circular with any circumstance which might be considered to impute insolvency was given. The jury disagreed. The defendants then moved that judgment be entered in their favour, on ground that there was no libel. The case went to the Court of Appeal, where the majority of the Court reversed the decision of the Divisional Court and entered judgment for the defendants. On appeal to the House of Lords this judgment was affirmed, Lord Penzance dissenting.

7 App
Cas. 741.
(1882.)

In *Williams v. Smith* judgment had been obtained in a County Court against the plaintiff, which judgment the plaintiff had satisfied, but had omitted to have notice of the satisfaction entered in the Register of the Court. The defendant published a trade newspaper, in which appeared, under the head of "Gazette," a list of judgments entered in the county court register, in which the name of the plaintiff with the judgment against him was inserted. The plaintiff

22 Q. B. D.
134.
(1889.)

brought an action for libel, alleging by innuendo that the insertion of his name in that column implied that the judgment remained unsatisfied, and that he was unworthy of credit. This innuendo the defendant denied. The judge held that there was a case to go to the jury, and the jury found for the plaintiff. Manisty, J., in delivering judgment, said: "The questions are, whether the statement which has been published by the defendant is capable, as a matter of law, of the meaning imputed to it in the innuendo, and whether the jury were justified in finding that the statement bore this meaning, and was therefore libellous. The plaintiff is a hatter. The statement complained of was published in the *Hatters' Gazette* in a column headed 'The Gazette,' and containing lists of bills of sale, county court judgments, and proceedings in bankruptcy affecting members of the trade. . . . The meaning imputed to the statement in the innuendo is that the judgment was not satisfied at the date of the publication. The avowed object of the column was to warn the trade against dealing with members whose credit was doubtful, and I think that, apart from authority, a judge might properly hold that the statement was capable of this meaning, and that a jury finding it in a 'black list' might reasonably so construe it."

2 C. P. D.
150.
(1877.)

Where ordinary and unambiguous words are used, and they are not *primâ facie* defamatory, and no ground is proved for considering them libellous, no action lies, even though damage has resulted from them to the plaintiff. See Lord Coleridge's remarks in *Hart v. Wall*.

CERTAINTY OF APPLICATION.—The second thing the plaintiff must prove is, that the defamatory statement referred to himself. It is not meant by this that he must be referred to by name. It does not matter how general or vague the reference is, provided it contains enough to enable a reader to identify it as applying to the plaintiff. Sometimes, indeed, the reference may be, as one might say, by inference only. For example, a

person by his description of something belonging to the plaintiff may reflect on the moral character of the plaintiff himself.

In *Russell and Another v. Webster* the plaintiffs were proprietors of the *Army and Navy Gazette*, the defendant the publisher of the *Broad Arrow*. The *Broad Arrow* accused the *Army and Navy Gazette* of publishing weekly, for valuable consideration, the advertisements of usurers. "The paper we have named," it added, "takes other advertisements cheap—on a third of their scale for instance—to induce respectable advertisers to appear in the usury and quack doctor page." At trial it was proved that the plaintiffs did not manage the *Army and Navy Gazette*, that there was no special page in that paper for usury and quack doctor advertisements, that money advertisements were charged 25 per cent. more than others, and that respectable advertisements were not taken at a cheap rate. The jury found for the plaintiffs, damages £5. On motion to enter a non-suit or judgment for defendants it was argued *inter alia* that the libel did not cast any imputation on the proprietors, but was merely a criticism of the management of the paper, and that at most it was only slander of title, and therefore special damage must be proved, which had not been done. The Court refused the rule. Bramwell, B., said: "The plaintiffs conduct an enterprise, and the defamatory words are published of them as the conductors of this enterprise; it is therefore a charge against them in their professional character, and, consequently, it is not so much a case of slander of title as slander of conduct." 23 J. P. 59. (1874.)

INNUENDO.—It may be mentioned that where the published matter is on the face of it defamatory, the plaintiff need not assign any meaning to it, but simply cite it in his statement of claim. Where, however, it is not on the face of it defamatory, but is ambiguous, or the alleged libel depends on a certain meaning being assigned to certain words or phrases in it, it is not enough merely to cite it in the statement of claim. The

defamatory meaning must be set out in what is called an innuendo. The plaintiff at trial is bound by the meaning set out in his innuendo, and if he fail to prove that the statement really bears that meaning his action will be dismissed, unless the original words themselves independent of the innuendo, were defamatory, in which case he may at trial abandon the innuendo—which was from the first unnecessary—and rely on the words themselves.

FUNCTION OF JUDGE AND JURY.—In considering whether matter is libellous, the functions of the judge and jury may be thus stated ; it is the duty of the judge to say if, reasonably considered, it *can* be libellous ; of the jury, if it *is* libellous. If the judge considers that the words complained of are capable only of one meaning, and that not defamatory, or are capable of a defamatory meaning, but no reason is given for attaching that meaning to them, or that there is no ground for holding that they apply to the plaintiff, it is his duty to withdraw the case from the jury and nonsuit the plaintiff. If, however, he considers that the words are *primâ facie* defamatory, or are ambiguous, and evidence that a defamatory meaning was intended has been produced, it is then for the jury to say whether they are libellous or not.

L. R. 4
C. P. 288.
(1869.)

In *Cox v. Lee*, Kelly, C.B., thus lays down the law : “ It is only where the judge is satisfied that the publication cannot be a libel, and that, if it is found by the jury to be such, their verdict will be set aside, that he is justified in withdrawing the question from their cognizance.”

7 App. Cas.
744.

In connection with this see Lord Selborne's remarks in *Capital and Counties Bank v. Henty* :—“ I do not understand any of the learned judges in the Courts below to have been of opinion (nor do I think it is the opinion of any of your

Lordships) that the question of libel or no libel must always and necessarily be left to a jury as to words not in themselves (*i.e.* in their proper and natural meaning, according to the ordinary rules for the interpretation of written instruments) libellous, without some evidence either of a libellous purpose on the part of the writer, or of some other extrinsic facts calculated to lead reasonable men to understand them in a libellous sense. . . . In deciding on the question whether the words are capable of that meaning, he (the judge) ought not, in my opinion, to take into account any mere conjectures which a person reading the document might possibly form, as to some out of various motives or reasons which might have actuated the writer, unless there is something in the document itself or in other facts properly in evidence, which to a reasonable mind would suggest, as implied in the publication, those particular motives or reasons."

LAWFUL EXCUSE OR JUSTIFICATION.

The fourth condition is, that the defamatory matter must be without lawful excuse or justification.

Lawful excuse or justification is matter of defence. The defendant in an action for libel may, after the matter complained of has been shewn to fulfil the three necessary conditions already discussed, plead either that it is

(1.) *PRIVILEGED*; that is to say, that, whether true or untrue, the circumstances of its publication render it non-actionable; or, that it is

(2.) *JUSTIFIED*; that is to say, that the libellous statement is true in substance and in fact.

Privilege and Justification are of sufficient importance to require a chapter to themselves.

CHAPTER II.

PRIVILEGE AND JUSTIFICATION.

MALICE as it is said is the gist of every action for libel. In general, the law presumes the existence of at least enough malice to give ground for an action, and no evidence of absence of actual malice will be sufficient to affect this presumption though such evidence will be admitted with a view to mitigating damages. There are certain exceptional cases, however, in which the presumption of law is precisely the opposite of that just stated; in these the law presumes, from the circumstances of the publication, that there is no malice; and no evidence of the existence of actual malice will be admitted. Such cases are called cases of *absolute privilege*. Midway between these two are cases where the law, from the circumstances of the publication, presumes that no malice sufficient to afford ground for an action exists, but at the same time will admit evidence of actual malice to rebut this presumption; these may be called cases of *partial privilege*.

This may at first sight be regarded as a somewhat novel and arbitrary classification, and it is not put forward as supplying any theory as to the principle upon which the law on the subject is based. But it will, we think, be found to express clearly the practical result of the decisions. Any justification necessary for the language used may be found in the judgment of Cockburn, C.J.,

in *Wason v. Walter*. "In the English law of libel, malice is said to be the gist of an action for defamation. And though it is true that by malice, as necessary to give a cause of action in respect of a defamatory statement, legal and not actual malice is meant, while by legal malice, as explained by Bayley, J., in *Bromage v. Prosser*, is meant no more than the wrongful intention which the law always presumes as accompanying a wrongful act without proof of malice in fact, yet the presumption of law may be rebutted by circumstances under which the defamatory matter has been uttered or published, and if this should be the case, though the character of the party concerned may have suffered, no right of action will arise." "The rule," says Lord Campbell, C.J., in the case of *Taylor v. Hawkins*, "is that, if the occasion be such as repels the presumption of malice, the communication is privileged, and the plaintiff must then, if he can, give evidence of malice."

L. R. 4
Q. B. p. 87.
(1868.)

4 B. & C.
255.
(1825.)

20 L. J.
Q. B. 314;
16 Q. B.
321.
(1851.)

ABSOLUTE PRIVILEGE.

Absolute privilege exists only in certain cases where the law considers it for the public benefit that the greatest liberty of expression should be permitted. These occasions may be ranked generally under three heads.

(1.) Statements made in, and Reports and Proceedings published by order or under the authority of, either House of Parliament.

(2.) Statements made and documents used in judicial proceedings.

(3.) Reports of State Officials to their superior officers and all publications made as acts of State.

In all these cases, no matter how defamatory and un-

20 Ir. L. R. 600. founded the statement may be, no action either for libel or slander will lie. See *Dillon v. Balfour*.

It must not be assumed, however, that because the original statements and reports in these three classes of cases are the subjects of absolute privilege, their reproduction in a newspaper will in all cases be afforded similar protection. This point will be dealt with later. It is only necessary here to notice that Reports, Papers, Votes, or Proceedings of either House of Parliament, which have been published by the order or under the authority of either House, are entitled to absolute privilege by 3 & 4 Vict. c. 9, s. 2. This applies only to the reproduction of the full Report or Paper. Sect. 3 of the same Act provides that partial privilege only is given to extracts from or abstracts of them. [For text of statute, see Appendix.]

Sect. 2 runs as follows:—

And be it enacted, that in case of any civil or criminal proceeding hereafter to be commenced or prosecuted, for or on account or in respect of the publication of any copy of such Report, Paper, Votes, or Proceedings, it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the Court or judge such Report, Paper, Votes, or Proceedings, and such copy, with an affidavit verifying such Report, Paper, Votes, or Proceedings, and the correctness of such copy, and the Court or judge shall immediately stay such civil or criminal proceeding; and the same, and every writ or process issued therein, shall be, and shall be deemed and taken to be, finally put an end to, determined, and superseded by virtue of this Act.

51 & 52
Vict. c. 64.

By sect. 3 of the Law of Libel Amendment Act, 1888, it would appear that, subject to certain limitations, absolute privilege is now extended to fair and accurate reports of judicial proceedings. As, however, other

reports are still only partially privileged we shall not further discuss this clause until we come to consider the whole subject of reports.

PARTIAL PRIVILEGE.

It will be seen that partial privilege affects newspapers much more nearly, and is immensely more important to them, than absolute privilege. It arises on certain occasions when the law considers it for the public benefit that facts should be freely reported, and freely commented upon, provided always that the facts be correctly reported, and the comments expressed fairly and without actual malice.

In *Clark v. Molyneux*, Brett, L.J., says:—"If the occasion is privileged, it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion for some indirect and wrong motive. If he uses the occasion to gratify his anger or his malice, he uses the occasion not for the reason which makes the occasion privileged, but for an indirect and wrong motive. If the indirect and wrong motive suggested to take the defamatory matter out of the privilege is malice, that does not mean malice in law, a term in pleading, but actual malice, that which is popularly called malice." 3 Q. B. D. 246-7. (1877)

In the *Capital and Counties Bank v. Henty*, Grove, J., thus defined express malice:—"I take 'express malice' to mean this: that it is not enough to say that the person publishing the libel disliked, or in his own mind internally wished to injure, a person, because a person may do perfectly right acts and yet may dislike the person with reference to whom he does them; there must 5 C. P. D. 525, 542. (1880.)

be something in the act of the person to show that he published the libellous matter not honourably, and not with a view of doing that which was right, but with a bye-motive, and that he did publish such a document knowing and believing that it would have the effect of doing what it ought not to do, namely, injury to the person not merely because he deserved to be injured or to be punished as an act of justice, or anything of that sort, but with the view of doing him an injury."

Partial privilege, then, is extended to reports, or statements of fact, or to comments on facts. We shall examine each of these separately.

STATEMENTS OF FACT.—Statements of fact are privileged when they are fair and accurate reports of the proceedings of certain public bodies, or of lawful public meetings called for the discussion of matters of public interest and concern. This is the broad statement of a rule which has been created partly by the decisions of judges, and partly by Acts of Parliament. The following come within its protection.

REPORTS OF PROCEEDINGS IN PARLIAMENT.—We have seen that the Reports and Proceedings published by authority of Parliament are absolutely privileged. This does not cover newspaper or other reports of the statements and debates in the House. Fair and accurate reports of proceedings in Parliament are, however, protected, if published without malice. This privilege was first formally recognized in the judgment of Cockburn, C.J., in the case of *Wason v. Walter* already referred to.

L. R. 4
Q. B. 73.
(1868.)

In that case the facts were as follows: The plaintiff pre-

sent a petition to the House of Lords charging Chief Baron Kelly with having, thirty years previously, when he was a practising barrister, pledged his honour to a statement which was false to his own knowledge, with the intention of misleading an Election Committee of the House of Commons. The petition further prayed that a committee might be appointed to investigate the charge, and, if it was found proved, that the House should concur with the House of Commons in praying the Queen to relieve Sir Fitzroy Kelly of his judicial position. The petition was presented by Earl Russell, who, however, declared that in his opinion the charge was fabricated. The petition was the subject of a debate, in which its author was severely dealt with. *The Times* reported the debate, and in an article criticised strongly the conduct both of the petitioner and of Lord Russell. On this the plaintiff brought an action for libel. Cockburn, C.J., directed the jury that, if the report was fair, it was privileged, and that the matter of the debate was of public interest, and therefore, if the comments on it were fair, they also were privileged. On both points the jury found for the defendant. The plaintiff moved for a new trial on the ground of misdirection. The rule was refused.

Extracts from and abstracts of Reports, Papers, Votes, or Proceedings of either House, which Reports, &c., have been published by order or under the authority of either House, are also, as we have already said, privileged if published *bonâ fide* and without malice. This is by virtue of section 3 of 3 & 4 Vict. c. 9, which runs as follows:—

And it is enacted, that it shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such Report, Paper, Votes, or Proceedings, to give in evidence under the general issue, such Report, Paper, Votes, or Proceedings, and to shew that such extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants.

Two points are to be noticed on this enactment. First, it does not require that the extract or abstract shall be fair; and secondly, it throws upon the defendant the onus of proving *bonâ fides* and absence of malice.

REPORTS OF JUDICIAL PROCEEDINGS.—Fair and accurate reports of proceedings in any Public Court of Justice are privileged unless their publication was prohibited by the Court itself or their subject-matter is seditious, blasphemous, or indecent. In such cases their publication, though not actionable, would be criminal: see *Davison v. Duncan*.

7 E. & B.
231.
(1857).

This was the rule established by numerous decisions of the highest courts. Recently it appears to have been modified by sect. 3 of the Law of Libel Amendment Act, 1888. That section runs as follows:—

A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

The most important question arising on this enactment is this: Does it confer, subject to the limitations set out, an *absolute* privilege on newspapers to publish reports of trials? We believe it does for several reasons. In the first place if it does not it is altogether useless, for newspapers had already, like everybody else, partial privilege with regard to the publication of such reports, and further, the restrictions put by it on such publication would be worse than useless, since under the old law which is not repealed, newspapers are entitled to publish without such restrictions. Again, no reference is made in the section to malice, whilst in the very next section

of the Act (4) it is expressly provided that reports of public meetings to be privileged must not be published maliciously.

To benefit by this section three things are necessary. First, the publication of the report must be in a "newspaper," as defined by the Newspaper Libel and Registration Act, 1881. Secondly, the report must be of proceedings publicly heard before a court exercising judicial authority; and, thirdly, it must be published contemporaneously with such proceedings.

It will be remembered that a newspaper under the Newspaper Libel and Registration Act must be published "at intervals not exceeding twenty-six days." Monthly magazines, annuals, &c., are therefore not included. See p. 2.

The next requisite is that the report must be of proceedings publicly heard before a court exercising judicial authority.

Two points are to be noticed here. The protection of the section is only extended to proceedings publicly heard. Therefore reports of proceedings heard *in camera* are not protected. This restriction is quite consonant with the reason of the privilege. The privilege of reporting judicial proceedings is based on the fact that in England the administration of justice is public. Where for any reason it is not conducted publicly the right to report does not exist (*per* Lord Halsbury, L.C., *Macdougall v. Knight*).

14 App.
Cas. 200.
(1889.)

The second point is that the proceedings must be before a court exercising judicial authority. This would appear to include all sorts of courts, from the highest to the lowest, and all sorts of proceedings, including *ex parte* applications.

Whether *ex parte* applications to magistrates came

within the privilege accorded at common law to reports of judicial proceedings was for a long time a vexed question, and it can scarcely be said to be settled beyond controversy yet. In *Duncan v. Thwaites* it was held that reports of such applications were privileged when the matter was finally disposed of by the magistrate, but not when the prisoner was committed for trial. This distinction would now probably not be recognized. In Ireland it has been expressly overruled in *R. v. Gray*. Again, in *McGregor v. Thwaites* it was held that there was no privilege for reports of *ex parte* applications where such applications were as to matters over which the magistrate had no jurisdiction. This rule has been greatly modified, if not altogether overturned, by Lord Coleridge's decision in *Usill v. Hales*.

3 B. & C.
556.
(1824.)

10 Cox,
C. C. 184.
(1865.)

3 B. & C.
24.
(1824.)

3 C. P. D.
319.
(1878.)

In this case the plaintiff was an engineer, and the libel complained of was an accurate report of an *ex parte* application made to a police magistrate by some workmen. The workmen in question appeared before the magistrate, and complained that the plaintiff had engaged them to work on a railway being constructed in Ireland, and that he had not paid them their wages. The magistrate told them that he could not help them, and that they must go to the county court. The *Standard*, *Daily News*, and *Morning Advertiser* reported this application, and the plaintiff brought actions for libel against all three papers. Lord Coleridge, C.J., held that the reports were privileged. His lordship based his judgment on a distinction between applications in their nature beyond the magistrate's jurisdiction and applications which would be within his jurisdiction, if the alleged facts on which they are based were proved. Reports of applications of the first kind he considered to be not privileged; of the latter kind to be privileged. Lopes, J., in the same case, held that want of jurisdiction does not take away the privilege, and that all reports of public proceedings before judicial authorities are privileged.

The third requisite is that the report must be published contemporaneously with the proceedings. Of course this condition cannot be taken literally, and as yet there has been no decision as to its exact meaning. It will possibly be held however that contemporaneous publication means publication in the next issue—whether the issue be daily or weekly—of the newspaper after the proceedings in question.

REPORTS OF OTHER PUBLIC PROCEEDINGS.—Newspaper privilege for reports of public proceedings other than parliamentary and judicial proceedings now depends on sec. 4 of the Law of Libel Amendment Act, 1888, which is substituted for sect. 2 of the Newspaper Libel and Registration Act, 1881. That section (4) runs as follows:—

A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the royal sign manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of State, commissioner of police, or chief constable, of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously:

Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter:

Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same:

Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit.

For the purposes of this section, "public meeting" shall mean any meeting *bond fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

44 & 45
Vict. c. 60.

Here again the protection of the section is confined to reports in "newspapers" under the Act of 1881. It is also important to note the provision that all privileges now by law existing are expressly reserved. Sometimes reports of proceedings coming within the words of the section are entitled to a wider privilege on other grounds, as for example reports of parliamentary or judicial proceedings. The Parnell Commission was a commission appointed by Act of Parliament, but at the same time it was a Court publicly hearing evidence, and as such reports of its proceedings were entitled to privilege whether they were of public concern and their publication for the public benefit or not. In the same way committees of the House of Commons for hearing evidence on private bills are within this section nominally, but reports of their proceedings are privileged independently of it. Further, the enactment does not authorize

the publication of blasphemous or indecent matter. The law as to that is left exactly as it was.

We must consider further what reports come within the privilege given by this section, and on what conditions that privilege is given.

OFFICIAL NOTICES.—First of all privilege is given to publication of any notice or report issued for the information of the public by, and published at the request of, any Government office or department, officer of State, commissioner of police, or chief constable. The important point here is that the office or department must be a Government one, and consequently the privilege spoken of does not extend to notices or reports published at the request of mayors, magistrates, county councils, or school boards.

MEETINGS OF PUBLIC BODIES.—Secondly, privilege is given to reports of meetings, open either to the public or to any newspaper reporter, of vestries, town councils, school boards, boards of guardians, boards or local authorities formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies; or of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the sign manual, or other lawful warrant or authority, select committees of either House of Parliament and justices of the peace in quarter sessions assembled for administrative or deliberative purposes. County councils, which are not mentioned, come within the phrase "board or local authority formed or constituted under the provisions of any Act of Parliament," which also includes sanitary boards, town commissioners, &c. &c.

PUBLIC MEETINGS.—Most important of all, privilege is given to reports of the proceedings of a public meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

The public meeting must be *bonâ fide* held, that is to say, it must not be a sham or bogus meeting got up simply that statements made at it might be reported. And it must be lawfully held, which would seem to mean that for whatever the purpose the meeting is held it must be held in a legal manner, not riotously, for example, or in a place where it is an obstruction of the thoroughfare. A religious or political meeting held in a crowded street is an example of a meeting for a lawful purpose held in an unlawful manner. It must, further, be held for a lawful purpose, therefore the report of a meeting held for the purpose of slandering an unpopular man or of inciting to a breach of the peace would not be privileged. Again, it must be held for the purpose of furthering or discussing a matter of public concern. "Public concern" is a new expression in law, and how it will be interpreted by the Courts it is difficult to say. Probably it will be held to be equivalent to "public interest," as that expression is understood in connection with the privilege of fair comment. If these conditions are satisfied, a report of the meeting will be privileged whether the admission to it was general or restricted, and whether newspaper reporters were admitted or not.

See *infra*,
p. 124.

This condition as to admission was inserted for the purpose of getting over the difficulty as to meetings where admission was by ticket. We venture to suggest the following as a criterion for determining what is

and what is not a public meeting: Did persons at the meeting in question obtain admission simply as members of the public, or did they obtain it on account of some personal qualification?

CONDITIONS OF PRIVILEGE.—The privilege granted by the Act is subject to certain definite restrictions.

In the first place the privilege will be lost if it be shewn that the report was published or made *maliciously*. By the Newspaper Libel and Registration Act, 1881, it rested with the defendant to shew absence of malice. By this section the burden of proof is shifted, and the plaintiff before he can take away the defendant's privilege must now shew the existence of malice.

Secondly, the privilege will be lost if it be shewn that the defendant was requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and refused or neglected to insert the same. No attempt is here made to define the precise conditions of the letter, either as to length or as to whether it shall be confined to matters of fact or may include matters of opinion and argument. It is only provided that the letter or statement must be a "reasonable" one. What is reasonable is a question of fact in determining which no doubt both the tone and the length of the letter or statement will be taken into consideration as well as the substance of it (*Risk Allah Bey v. Johnstone*). A letter may be unreasonably violent or unreasonably long as well as unreasonable in its assertions. The clause introduces into English Law, for the first time and in a negative form, a principle well known on the

See *infra*,
p. 157.

Pages 207, 214. Continent. As will be seen in the chapter devoted to Foreign Press Laws, the French and German Codes lay down certain rules as to the length and the subject-matter of the letter of rectification.

Finally, the privilege does not protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

This condition, which is not very happily worded, has already given rise to considerable controversy. It is doubtful whether the Courts will hold that it requires the defendant to prove that the matter is not only of public concern, *but also* that its publication is for the public benefit; or simply that the matter is either of public concern *or* that its publication is for the public benefit. We are inclined to consider the former the more natural interpretation, as otherwise the words "that its publication is for the public benefit" would be useless, since everything the publication of which is for the public benefit must be a matter of public concern.

6 Times
L. R. 62.
(1888.)

This view of the law seems to be supported by the case of *Kelly v. O'Malley*. That action was for a libel contained in a report of a public meeting published in the *Star* newspaper. The report was headed "Sugared," and it contained an account, not merely of the speeches delivered, but of the various interruptions—some of an insulting and disparaging kind—which came from members of the audience. The defendant did not deny the libel, but pleaded privilege under the foregoing section of the Act of 1888. In his summing-up Huddleston, B., said that in order to come within the protection of the Act the report must be true and accurate, it must not be published maliciously, and must be of public interest and benefit, and must not be indecent or blasphemous. His lordship previously in the course of the address of the counsel for the defence (Lockwood, Q.C.) observed that the publication must be for the public benefit besides

being of public interest, a proposition to which counsel acceded, adding, however, that anything of public interest must be also for the public benefit. The questions left to the jury were: First, was this a fair and accurate report? Second, if so, could anyone say that these personalities had anything whatever to do with the public interest or benefit? The jury found for the plaintiff.

We have said that the words "public concern" will probably be held to mean the same as "public interest." Whether the publication is also for the public benefit will be a question of fact for the jury to determine—a task which they sometimes find difficult, as appears in the case of *Venables v. Fitt*, where the jury after retiring returned to Court again to ask the judge how it could possibly be for the public good to publish a libel.

5 Times
L. R. 83,
24 Nov.
1887.

In *Rees v. Wright*, Lawrence, J., gave an explanation of what is meant by the publication of a libel being for the public benefit, which has since been quoted with approval by various judges. Where the general advantage to the country in having the libel made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such libel, its publication will be held to be for the public benefit. In *Pankhurst v. Sowler* it was decided that the question to be submitted to the jury was, under the Newspaper Libel and Registration Act, not whether the publication of the report was for the public benefit, but whether the publication of the defamatory matter in the report was for the public benefit. The Libel Law Amendment Act leaves this unaltered, and so a newspaper is still responsible for any defamatory matter published in a report of a public meeting unless the publication of that defamatory matter was for the public

8 T. R.
298.
(1799.)

3 Times
L. R. 193.
(1896.)

Supra.

benefit. See Baron Huddleston's observations in *Kelly v. O'Malley*.

FAIR AND ACCURATE.—In order to be privileged, all reports, whether of parliamentary, judicial, or other proceedings, must be fair and accurate. What, then, is a fair and accurate report? It need not be a full one, neither need it be an absolutely correct one; slight inaccuracies will not destroy the privilege. What is necessary to secure privilege appears to be: an account of what took place sufficiently full and accurate to enable a reader to form a substantially correct opinion of the whole proceedings. Thus, for instance, a speech in Parliament defaming the plaintiff must not be given, and all report of the reply to it left out. In the same way the evidence in chief must not be given and the cross-examination which shook or overthrew it omitted. It has been doubted whether even the judgment of the Court may be separately published unless it contains a sufficient *resumé* of the facts of the case to enable a reader to form his own opinion on its merits.

17 Q. B. D.
636.
(1886.)

In *Macdougall v. Knight* the question whether the report of the judgment in an action, when that judgment reflected upon the plaintiff's character, and neither contained nor was accompanied by a *resumé* of the evidence on which it was based, was a fair report of judicial proceedings, and, therefore, entitled to protection, was much considered. When the case first came before the Court of Appeal that Court expressly decided that the separate publication of the judgment in an action was entitled to privilege whether that judgment was right or wrong. "The responsibility for the accuracy of the judgment," said Lord Esher, M.R., "rests on the judge who delivers it, not on the person who publishes the report of it." The case afterwards went to the House of Lords, when the decision of the Court of Appeal was affirmed,

14 App.
Cas. 194.
(1889.)

but upon a different ground. Two of their lordships—the Lord Chancellor and Lord Bramwell—while not expressly dissenting from the Court of Appeal upon the point of privilege for reports of judgments, seemed to be inclined to hold that the fact that a publication was proved to be an accurate report of the judgment in an action, was not conclusive that it was therefore a fair and accurate report of judicial proceedings so as to entitle it to protection. The Lord Chancellor said: “I am not prepared to admit that the judgment of a learned judge must necessarily be privileged. It is obvious that a partial account of what takes place in a Court of justice may be the exact reverse of putting the person to whom the publication is made in the same position as if he were present himself. If the evidence of a witness containing matter defamatory to an individual were published, and the cross-examination which shewed the witness to be a person unworthy of belief were suppressed, it would obviously be a partial and inaccurate account of what took place; and if a learned judge’s judgment or summing-up to a jury did not, in fact, give reasonable opportunities to the reader to form his own judgment as to what conclusion should be drawn from the evidence given, I think the publication of such partial, and in that respect inaccurate, representations of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer. Nor do I think that there is any presumption one way or the other as to whether a judge’s judgment does or does not give such a complete and substantially accurate account of the matters upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law.”

Page 200.

The plaintiff afterwards brought a new action on the same libel which the Court of Appeal dismissed on the ground of *res judicata*. In delivering judgment the Court of Appeal referred to the observations of the Lord Chancellor and Lord Bramwell. The Master of the Rolls and Lord Justices Fry and Lopes adhered to the former decision of the Court of Appeal—namely, that an accurate report of the judgment in an action, apart from the evidence, was entitled to

25 Q. B. D.
1.
(1890.)
See *infra*,
p. 159.

Page 9.

privilege. Lord Esher, M.R., said: "The first thing to remark is, that the decision of this Court in *Macdougall v. Knight* as to privilege was not overruled in the House of Lords. Further, their lordships did not express any opinion on any point of law; all that happened was that two learned lords intimated their desire that it should not be taken that they had expressed any opinion. . . . It—the doctrine that reports of judgment are not *ipso facto* privileged—would be, it seems to me, against public policy and contrary to the very ground of the privilege—which is that the publication of what took place is merely a means of putting those who are not present in Court in the position of those who were present. There would be another and a practical difficulty as to what, if this were the rule, the reporter would do. If he reports the judgment, is he bound to plead that what the judge said was true and correct? In making the report he did not allege this, but only held out that the report was an accurate one of the judgment, and that may be true. Yet, if the suggestion is upheld, the accuracy of the report would be no justification, and it would be put on the reporter to go further and say that what the judge said was true. That may be the duty of a properly constituted Court of Appeal, but I do not see how it can be the duty of a reporter."

HEADINGS OF REPORTS.—It is to be remembered that the heading of a report, and any observations by the reporter, are not parts of the report, but comments upon it, and that they are not privileged unless they can be shewn to be fair comments on a matter of public interest.

3 B. & Ald.
702.
(1820.)

In the case of *Clement v. Lewis* the plaintiff brought an action against the defendant for publishing in *The Observer* a libel of and concerning the plaintiff in his profession as an attorney. The alleged libel consisted of the report of certain proceedings in bankruptcy, in the course of which the plaintiff's character was seriously impugned; the report being headed "Shameful conduct of an attorney." The defendant

pleaded that the alleged libel was a fair and accurate report of the proceedings in a court of justice, and on trial the jury found for the defendant. After verdict it was held that the plea was bad, since the heading "Shameful conduct of an attorney" was no part of the proceedings in the Court.

The recent case of *Williams v. Smith* already cited may also be referred to in this connection. There the action was for the publication of a judgment recovered in the County Court against the plaintiff. The judgment was published in a trade newspaper under the heading "Gazette," and in company with a list of bankrupts and bills of sale. The innuendo was that the defendants suggested that the judgment was not satisfied (when, as a matter of fact, it was satisfied), and that the plaintiff was not a person worthy of credit. It was held that there was evidence of this innuendo to go to the jury, and the jury found for the plaintiff. On motion for a new trial the Court refused the rule. In giving judgment Pollock, B., said, "If this statement is to be regarded as a fair report of a judicial proceeding it is privileged according to law. I think the effect of the judgment of Lord Cottenham in the House of Lords in *Fleming v. Newton*, with which I agree, is to place the publication of a mere extract from a record of judgments kept pursuant to statute on the same footing as a fair report of a judicial inquiry. But this is not a case of the publication of a mere extract from a record of judgments. This newspaper is called the *Hatters' Gazette*, and it is published in order to give information to persons carrying on business as hatters as to matters which are of interest to the trade, among others as to the credit of members of the trade. . . . I think it obviously of great importance that such published statements as this should be really true, and not merely true in the sense that they are accurate reproductions, though that which they reproduce happens to be an extract from a record of judgments."

With *Williams v. Smith* may be compared the Irish case just reported of *Lord Annaly v. The Trade Auxiliary Company*. The action in this case was also for the publication of a judgment, the alleged libel consisting in this, that the defendants' paper—*Stubbs' Gazette*—had published that a certain judgment had been recovered against him, without qualifica-

22 Q. B. D.
184.
(1888.)
See *infra*,
p. 97.

1 H. L. C.
363.
(1848.)

26 L. R. Ir.
11, 394.
(1890.)

tion when, as a matter of fact, it had been recovered against him as his father's executor. From the evidence it appeared that the judgment in question had been recovered in England, and that afterwards it had been registered in the High Court in Ireland, being entered in both cases as against the plaintiff as executor. Through some error it was afterwards entered in the Registry of Judgments in Ireland merely as against Lord Annaly. This registry is by statute open to the public, and may be searched by any one on payment of a fee. From this the entry in the defendants' paper had been copied. Malice was not alleged, nor was it denied that the defendants' announcement was an accurate transcript from the Registry of Judgments; but it was contended that the announcement was false and defamatory of the plaintiff, and due to the defendants' negligence, since, by referring to the original judgment, they would have found that it was not against the plaintiff personally, but as executor. The defendants pleaded privilege. At trial the jury found for the plaintiff, £250 damages. On the application of the defendants, the Court of Exchequer entered the verdict for the defendants, on the ground of privilege, the announcement in the *Gazette* being an accurate transcript of a record of judgments kept and published by authority of statute. On appeal, this decision was affirmed. The Court, while neither dissenting from nor approving of the decision in *Williams v. Smith*, pointed out that this case was distinguishable from it, in that there it appeared that it was the context which made an otherwise privileged announcement actionable.

It may be desirable to add that there is absolutely no privilege for the publication of statements made to editors or reporters. If an editor publishes a statement made to him or to his reporter, and if it prove untrue, it will be no defence that the editor believed it to be true, and published it exactly as it was made to him (*Davis v. Shepstone*).

11 App.
Cas. 187.
(1886.)

COMMENTS ON FACTS.—Comments on matters of

public interest, no matter how severe they may be in their references to the individuals concerned, provided they are fair and *bonâ fide*, are privileged. Some authorities, indeed, maintain that fair and *bonâ fide* comments are not defamation at all. It is, however, convenient to place them under the head of privilege, since the same rules apply to them as if they were matters of privilege.

In *Henwood v. Harrison*, Willes, J., treated *bonâ fide* criticism published without malice as a case of privilege. That view of the matter had been previously dissented from in *Campbell v. Spottiswoode*, where it was held that a *bonâ fide* criticism without malice was not privileged, but was, if fair, no libel. This latter view has been adopted by the Court of Appeal in the recent case of *Merivale v. Carson*, where Lord Esher, M.R., says: "A privileged occasion is one on which the privileged person is entitled to do something which no one else who is not within the privilege is entitled to do on that occasion. But in the case of a criticism of a published work, every person in the kingdom is entitled to do, and is forbidden to do exactly the same things, and therefore the occasion is not privileged." It seems on this principle that the right to publish reports of Parliamentary proceedings is not more privileged than the right to comment on public affairs, for certainly the privilege there is not confined to certain persons. Perhaps it may be permitted to suggest that there are two kinds of privileged occasions—those privileged on account of the character of the person publishing, and those privileged on account of the nature of the matter published. The first may be said to exist where it is a person's legal or moral duty to do a certain act; the other where it is for the public benefit that the act should be freely done. The first would cover official reports, character of servants, &c.; the latter, reports of proceedings affecting the public, and comments thereon. However, as said by Bowen, L.J., in *Merivale v. Carson*, the point is less practical than academic.

L. R. 7
C. P. 606.
(1872.)
32 L. J.
Q. B. 185.
(1863.)

20 Q. B. D.
P. 280.
(1897.)

PUBLIC INTEREST.—The first question which arises

with regard to fair comment on matters of public interest is, what are matters of public interest? Speaking broadly, we may say that when any one solicits the attention or support of the public, or when any act or proceeding affects the rights or welfare of the community, that person's conduct, or that act or proceeding, is a matter of public interest, and fair comment upon it will be privileged. It seems to be for the jury to determine both whether the case is one of public interest and whether the comments are fair and *bonâ fide*. See, however, *Weldon v. Johnston*.

Times,
27th May,
1884.

It has been held over and over again that the conduct in their office of all public officials and the public conduct of other persons holding public positions, or leading a public life, are matters of public interest as affecting the welfare of the community. Under the head of public officials and persons holding public positions are included all members of parliament, members of local boards, and clergymen, at least of the Established Church.

6 M. & W.
105.
(1840.)

In *Parmiter v. Coupland* the action was for libels published by the defendant in his newspaper, the *Hampshire Advertiser*, of and concerning the plaintiff, who was mayor of Winchester. The libels imputed to the plaintiff partial and corrupt conduct and ignorance of the duties of his office. In summing up, Coleridge, J., told the jury that there was a difference with regard to censures on public and on private persons; that the character of persons acting in a public capacity was to a certain extent public property, and their conduct might be more freely commented on than that of other persons. The jury found for the defendant. On motion for a new trial, it was held that, though the verdict was wrong, there was no misdirection. Parke, B., in the course of his judgment, said: "Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he do not make his commentary a

cloak for malice and slander; but any imputation of wicked or corrupt motives is unquestionably libellous."

In the same way the conduct of public affairs and the working of public institutions are matters of public interest, since nothing affects more nearly the rights and welfare of the community. Thus the foreign and domestic policy of the Government, the proceedings of Parliament, the decisions of Courts of law, the methods of education at universities and public schools, are all subjects of fair comment.

In *Wason v. Walter*, already cited, it was held that comments on parliamentary proceedings were justified.

L. R. 4
Q. B. 87.
(1870.)

In *Purcell v. Souler*, it was held that the administration of the Poor Law was matter of public interest.

2 C. P. D.
218.
(1877.)

In *Cox v. Feeney*, it was held that the management of a college was matter of public interest.

4 F. & F.
13.
(1863.)

It often happens that the way in which private enterprises are conducted is a matter affecting the welfare of the public. If a private enterprise be conducted in such a way, for instance, as to lead to fraud, or to the injury of public morals, or to the creation of pernicious monopolies, comment upon it would, beyond doubt, be held to be privileged.

In *Riordan v. Wilcox and Others* the plaintiff was an agent for exhibitions. In this capacity he sent out circulars to intending exhibitors at the Liverpool Exhibition, in which he described himself as an officially-appointed Exhibition agent—which was not true. In a letter to an exhibitor he said that if the exhibitor wanted a gold medal he had better confide his exhibits to him, adding that he could not write all that he could in conversation tell him. Afterwards rumours coming out that the medals at the Exhibition had been awarded unfairly, and that undue influence had been brought to bear on the jurors, the defendants' paper, the *Liverpool Evening Express*, commented severely on the scan-

4 Times
L. R. 475.
(1888.)

dal, and demanded an investigation into "the notorious proceedings of Mr. T. Vincent Riordan," and referred to "his nefarious behaviour." Huddleston, B., left it to the jury whether the matter was one of public interest, and secondly, whether the comments were fair and *bond fide*. If they decided both questions in the affirmative, their verdict should be for the defendants. The jury found for the defendants.

It has already been said that when a person himself solicits the attention or support of the public his conduct in doing so is matter of public interest. Examples of soliciting the attention of the public are numerous; publishing a book, exhibiting a picture, performing or producing a play or piece of music at a theatre or concert, advertising the merits of one's wares, may be instanced as cases where the person concerned has, by soliciting the attention of the public, given the public and the press a right to criticise and comment upon his work.

4 F. & F.
983.
(1866.)

In *Hunter v. Sharpe* the plaintiff, a medical practitioner, advertised that he was in possession of a specific remedy for a disease hitherto considered incurable—consumption. *Held* that this was a matter of public interest, and fair and proper subject for public comment.

4 F. & F.
1107.
(1866.)

In *Strauss v. Francis* plaintiff published a book, which was denounced in the *Athenæum*. *Held*, that the book was fair subject of comment. Cockburn, C.J., in addressing the jury, said: "A man who publishes a book challenges criticism; he rejoices in it if it tends to his praise, and if it is likely to lead to increase the circulation of his work; and therefore he must submit to it if it be adverse, so long as it is not prompted by malice, or characterised by such reckless disregard of fairness as indicates malice towards the author."

FAIR COMMENT.—"Fair comment" will be found to be a much more difficult matter to decide upon than "public interest," for it is, necessarily, largely a matter of opinion, and in determining it the jury must have

regard to many circumstances. Of these, the most important is the state of the defendant's own mind. If it be suspected that he was actuated by malice in his criticism, or that he did not state his honest opinion, the jury will be inclined to hold that his comments were not fair. If, however, there be no suspicion of malice, and if he did state his honest opinion, it matters little how severe was the comment.

Two definitions of "fair comment" may be cited. The first is that given by Lord Esher, M.R., in *Merivale v. Carson*: "What," his lordship says, "is the meaning of a 'fair comment'?" I think the meaning is this: is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men, with ordinary judgment, must say whether any fair man would have made such a comment on the work. It is very easy to say what would be clearly beyond that limit; if, for instance, the writer attacked the private character of the author. But it is much more difficult to say what is within the limit. That must depend upon the circumstances of the particular case."

20 Q. B. D.
P. 280.
(1887.)

The second is that given by Lord Tenterden, C.J., in *Macleod v. Wakley*, and quoted with approval by Bowen, L.J., in the last-mentioned case: "Whatever is fair, and can be reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears that, under pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author; then it will be libel."

3 C. & P.
P. 313.
(1828.)

MIXED COMMENT AND STATEMENT OF FACTS.—It seldom happens, however, that comments on matters of public interest are simply comments. Almost invariably they are mixed up more or less with statements of fact. The commentator, not content with expressing his

opinion of the act or conduct in question, proceeds to suggest motives and make charges. With regard to this one or two rules may be laid down.

In the first place the character of the act, conduct, or work commented upon or criticised must not be misrepresented.

20 Q. B. D.
275.
(1888.)

In *Merivale v. Carson* the plaintiff had, in collaboration with his wife, written and produced a play, called "The Whip Hand." In this play the wife of one of the characters was a gambler, who, in order to meet her losses at play, had been compelled to borrow money, and so put herself in the power of an adventurer. No criminality was suggested. The defendant was the editor of a theatrical paper called the *Stage*. On the production of the plaintiff's play a criticism of it appeared in the *Stage*. The part of it to which most exception was taken was as follows: "'The Whip Hand,' the joint production of Mr. and Mrs. Herman Merivale, gives us nothing but a hash-up of ingredients which have been used *ad nauseam*, until one rises in protestation against the loving, confiding, fatuous husband with the naughty wife and her double existence, the good male genius, the limp aristocrat, and the villainous foreigner." The innuendo was that the article implied that the play was of an immoral tendency. There was no allegation of malice. Jury found for the plaintiff, damages one shilling. On appeal by the defendant, the Court held that, as "naughty wife" might reasonably be held to mean adulterous wife, and as the jury had found it actually meant that, the verdict must stand.

In the next place, corrupt or improper motives for the act or conduct should not be alleged unless they be fairly deducible from the act or conduct. If such motives are alleged without such reasonable suggestion, it will be no defence that the writer honestly believed on extrinsic grounds that they were the plaintiff's real motives; he will have to prove they were actually the real motives, or he will be liable in damages.

In *Campbell v. Spottiswoode* the defendant was publisher of the *Saturday Review*. The plaintiff, a Dissenting clergyman, was the editor and proprietor of a religious newspaper called the *British Ensign*. The *British Ensign* proposed to publish a series of letters addressed to eminent persons upon the subject of evangelizing the Chinese, and asked that sympathizers should promote the circulation of the paper in order to call the attention of missionaries and others to the importance of the work. Afterwards lists of subscribers for copies were published, one of which was as follows: "The Hon. Mrs. Thompson, 5000 copies; An Old Soldier, 100; R. G., 240," &c. The *Saturday Review* criticised this proceeding, and insinuated that the motive of it was to promote the circulation of the paper rather than to convert the Chinese. The jury found damages £50, and specially that the defendant honestly believed the imputations to be true. *Held*, on appeal, that though *bonâ fide* belief in imputations might be a ground for mitigation of damages, yet it constituted no defence. Cockburn, C.J., however, said: "I think the fair position in which the law may be settled is this: that where the public conduct of a public man is open to animadversion, and the writer who is commenting upon it makes imputations on his motives which arise fairly and legitimately out of his conduct, so that the jury shall say that the criticism was not only honest, but also well founded, an action is not maintainable. But it is not because a public writer fancies that the conduct of a public man is open to the suspicion of dishonesty, he is therefore justified in assailing his character as dishonest."

3 B. & S.
769.
(1863.)

The statements of fact on which the comments are based must themselves be reasonably accurate, more especially if the comments upon them contain a reiteration and restatement of them.

In *Bryce v. Rusden* the defendant, in a history of New Zealand, stated that the plaintiff, when a lieutenant in the Kai Jwi cavalry, had slaughtered some native women and children; that he had dismissed a subordinate officer who had protested against his cruelty, and that he had ever after-

2 Times
L. R. 435.
(1886.)

wards been known amongst the natives as the "kohurn," or murderer. It was not contended by the defendant that these allegations appeared in any other history of New Zealand, or in the official reports; but he alleged that he had heard of them among the natives, and he called a witness who, on hearing evidence, had made a statement to the Governor of New Zealand, containing substantially the same charges. A copy of this statement had been forwarded by the Governor to the defendant. Huddleston, B., held, that the *bonâ fide* belief, without malice, of the defendant that the charges were true, was no defence. The jury found for the plaintiff, damages £5000.

4 Times
L. R. 467.
(1888.)

In *Peters v. Bradlaugh* the defendant, in a letter to the *Times*, had announced that he could prove that the plaintiff had received a cheque from Lord Salisbury for the purpose of defraying the expenses of summoning a meeting in Trafalgar Square, with the object of denouncing the system of sugar bounties, and that that was the meeting which, in the previous year, had ended in rioting and pillaging. This letter was published in connection with the suppression of public meetings in Trafalgar Square by Lord Salisbury's Government. At trial it was proved that, though Lord Salisbury had given a cheque to the plaintiff about the time of the disorderly meeting, it had been given for a quite different purpose. It was not alleged that the defendant did not *bonâ fide* believe that his statement was true. The jury found for the plaintiff, damages £300.

11 App.
Cas. 187.
(1886.)

See further *Davis v. Shepstone*.

Lastly, the comments should be confined to the conduct or act which is matter of public interest. In other words, the conduct or act should not be made the pretext for dragging in a general discussion of the plaintiff's acts or conduct in matters with which the public have no concern, or for throwing reflections on his character not arising out of the conduct properly discussed.

Times,
27th May,
1884.

In *Weldon v. Johnston* the plaintiff had several disputes with the French composer, M. Gounod, which resulted in the

latter applying to a police magistrate for a summons against the plaintiff. The defendant, who was London correspondent of the *Paris Figaro*, commenting upon this made a series of statements regarding the private disputes between the plaintiff and M. Gounod. *Held*, that the fact that M. Gounod had applied for a summons against the plaintiff was not sufficient to make their private relations a matter of public interest.

Occasionally, however, the private character of a person may be matter of fair comment.

Thus in *S. v. Butterworth* the plaintiff, who was a Q.C. and also a Member of Parliament, was appointed Recorder of a northern borough. At the time this latter appointment took place an investigation into his private conduct before the Benchers of his Inn was pending, which resulted in a censure being passed upon him. After his appointment, he, in a speech to his constituents, referred to this censure, and denounced the Benchers for unfairness. The *Law Review*, commenting on this, discussed the judgment of the Benchers. *Held*, that plaintiff's private character was matter of fair comment. Cockburn, C.J., in his summing up, said: "Mr. S. was not merely a member of the Bar; he was not only a Member of Parliament; he was actually one of the judges of the land. . . . Mr. S. held a position in which integrity, honesty, and honour were essential; and if in his private conduct he shewed himself destitute and devoid of those essential qualities, surely it could not be said that it was not a fair matter for public animadversion, so long as the writer keeps within the bounds of truth and the limits of just criticism."

3 F. & F.
372.
(1862.)

JUSTIFICATION.

Finally, the defendant in an action may plead justification as it is called; that is to say, that the statement complained of is true in substance and in fact.

The object of the civil law is to preserve to every man what properly belongs to him—among other things,

reputation. The reputation properly belonging to a man cannot however be taken from him or injured by publishing the truth about him. Accordingly, to every action for injury to reputation it is a complete answer to prove that the defamatory statement is true. This is what is called "justifying the libel."

10 B. & C.
P. 272.
(1829.)

The ground on which justification is based is clearly stated by Littledale, J., in *McPherson v. Daniels*. "The truth is an answer to the action . . . because, it shews that the plaintiff is not entitled to recover damages; for the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess."

Privilege is a defence independently of the truth or falsehood of the libel. Justification is a defence only when the libel is true, and when it can be proved to be true—sometimes a very different thing. Privilege and justification however are not inconsistent defences; they may both be pleaded for the whole libel, as, for instance, that the libel is true in substance and in fact, and if not true, that it is privileged; or, the one may be pleaded for one part of a libel, and the other for the rest, provided the libel consists of two or more separable statements. Where, however, privilege affords a complete defence, it is unwise to attempt to justify.

PARTIAL JUSTIFICATION.—Where the libel consists of separable statements, not merely may some of the statements be justified and privilege pleaded for the others, but some may be justified, and the others denied to be libellous or admitted to be libellous, and money paid into court in respect of them. Unless, however, it is made very clear what is justified and what is not jus-

tified, the Court will be inclined to regard the defence as embarrassing (*Fleming v. Dollar*). 23 Q. B. D. 388. (1889.)

The case of *Clarkson v. Lawson* may be cited here. The libel consisted in a statement published by the defendant that the plaintiff, a proctor, had been three times suspended from the practice of his profession, once by Lord Stowell, and twice by Sir J. Nicholl. In reply, the defendant pleaded in justification that the plaintiff was once suspended by Sir J. Nicholl. On demurrer this was held a bad plea. Afterwards the case came before the Court in another form, when the defendant pleaded in justification of that part of the libel which stated that the plaintiff had been suspended by Sir John Nicholl, that the plaintiff had been so suspended. On demurrer it was argued that the charge made against the plaintiff was not severable, and must be justified altogether, or not at all. The Court held, however, that the charge was severable, and the plea good. Tindal, C.J., in his judgment, said: "I agree that when the charge complained of is not severable in its nature, the defendant must justify to the full extent of the charge. Upon a charge of murder, for instance, it would be no plea to allege that manslaughter had been committed, because such a plea would not confess what was imputed, or any part of it. But here, when the defendant says that the plaintiff was suspended three times, it is no more than saying he was suspended once on such a day, once on such another day, and once on a third day; and there can be no doubt he may confine his justification to one of the days, leaving the plaintiff to establish the damage resulting from the residue of the charge." 6 Bing. 266, 587. (1830.)

Page 593.

PROOF REQUIRED.—Justification is always a dangerous plea on account of the strictness of the proof of truth required by the Court. Where the libellous statement is a specific charge or several specific charges against the plaintiff, the defendant, on a plea of justification, must prove that very charge or each of those very charges in every material detail; but where it is a general charge, the specific imputations on which the general charge is

based, and of which as a rule there must be more than one, must be set out with as much particularity as in an indictment and proved as conclusively.

14 Cox,
C. C. 419.
(1880.)

In *Regina on the prosecution of Lambri v. Labouchere* the libel consisted in a charge against the prosecutor, Lambri, published in the defendant's paper, *Truth*. The charge was to the effect that Lambri was "one of a gang of card-sharpers." On a plea of justification it was proved that in two cases the prosecutor with a confederate swindled certain persons at cards. It was also proved that he had entered into a confederacy with other persons to play and win money by swindling, and that he had assumed the title of Pasha with the intention of getting admission to clubs and private houses for this purpose. *Held*, on these findings, that the plea was satisfied. Cockburn, C.J., in his summing-up, said that it was sufficient if the plea was proved in substance. Where the libel consisted of a number of specific charges all of them required to be proved; but here it was different, for the libel was general, and it was sufficient to prove so much of the plea as would justify the libel.

8 Car. & P.
895.
(1839.)

In *Willmott v. Harmer* the action was on account of an article published by the defendant, in which the plaintiff, who had been arrested on a charge of bigamy, was described as having been guilty of the offence of marrying a great number of wives—"three having appeared in Court, and a great many others being kept in reserve." It was proved at trial that the plaintiff had married two women, and that at the time of his arrest he was living with a third (Rachel Lamb) whom he described as his wife. In summing up Lord Denman said: "The first plea of the defendants is a plea of justification of so much of the libel as imputes the crime of bigamy to the plaintiff; and I think that on this plea of justification you should have the same strictness of proof as on a trial for bigamy. The second plea justifies the imputation of polygamy. . . . If, by the word polygamy, it is meant that the plaintiff had married three wives as distinct from the charge of the crime of bigamy, I think the plea is proved, because in that view the evidence of the reputation and cohabitation as to Rachel Lamb would be

receivable as evidence of the plaintiff's marriage with her." Verdict on both issues for defendant.

In *Leyman v. Latimer and Others* the plaintiff was editor and proprietor of the *Dartmouth Advertiser*, and the defendants proprietors of the *Western Daily Mercury*. On 24th April, 1876, the defendants published that "the plaintiff was a convicted felon." On 1st May, 1876, the defendants' newspaper referred to the *Dartmouth Advertiser* and its "bankrupt and felon editors." On action the defendants denied that "bankrupt editor" referred to the plaintiff, and justified the reference to the plaintiff as a convicted felon and felon editor by pleading that the plaintiff had been convicted and imprisoned for twelve months for stealing feathers. At trial before Blackburn, J., without a jury, a verdict was entered for the defendants on the ground that the libel was true. On motion for a new trial the Court entered judgment for the plaintiff on the demurrers as to justification, and ordered a new trial to assess damages. On appeal this judgment was affirmed. Bramwell, L.J., held that while the expression "convicted felon" had been justified by proving the conviction for felony of the plaintiff, the expression "felon editor" had not been justified, as the conviction of a person for felony was not technical proof that he was a felon, i.e. had committed felony. Brett and Cotton, L.JJ., held that the term felon editor could not be justified by proving a previous conviction, on the ground that a person who has suffered the punishment fixed for a crime has purged himself of the crime, and is no longer a felon.

3 Ex. D.
15, 352.
(1878.)

INNUENDO.—Where the plaintiff has assigned a meaning to a libel by what is called an innuendo, the defendant in justifying the libel is not bound to justify that meaning. He may deny that the meaning assigned to the libel by the plaintiff is its real meaning, and justify the libel as he published it. Of course, it is then for the jury to say what the real meaning is, and whether the defendant has justified it.

In *O'Brien v. Salisbury* the action was brought on account

Times, 9th
May, 1890

of certain expressions used by the defendant, the Marquis of Salisbury, in a speech delivered by him at a public meeting at Watford. The expressions complained of were as follows: "Mr. O'Brien, in language not so crude as I have used, but perfectly distinct, urged upon all those who heard him that men who took unlet farms should be treated as they had been treated during the last ten years in the locality in which he spoke—that is to say, that they should be murdered, robbed, their cattle shot and ill treated, their farms devastated." In his statement of claim the plaintiff citing this added that it implied that the plaintiff had in the speech commented upon incited those present to commit those offences. The defendant denied this innuendo, and pleaded that the statement was true in substance and in fact, and that it was *bond fide* comment on matter of public interest. The jury found for the defendant. A new trial was applied for on the ground *inter alia* that the verdict was against the weight of evidence. The application was refused by the Divisional Court, whose decision was afterwards affirmed by the Court of Appeal.

SEPARABLE LIBEL.—Where, however, the libel contains several distinct and separate charges, the plaintiff can bring an action on one or more of these, in which case a reply justifying those charges not proceeded upon will not be admitted in justification of the libel.

10 L. T.
Rep. 816.
(1864.)

In *Bembridge v. Latimer* the defendant published in the *Western Times* an article accusing the plaintiff, who was a solicitor, of gross ingratitude towards a former client, and also called him a "convicted briber." The plaintiff brought an action for libel, and in his declaration (*i.e.* statement of claim) set out the charge of ingratitude. The defendant in his reply set out a distinct act of bribery against the plaintiff; and, further, set out the whole article from the *Western Times*, in which, after the plaintiff's name, appeared the words "the convicted briber." The plea alleged that the words omitted from the declaration altered the meaning of the article in an unfair manner, and alleged that the true meaning of the article was that the plaintiff had been guilty of

bribery and ingratitude. *Held*, that the plea must be struck out as embarrassing.

To attempt, however, to bring an action on the minor charges in a libel, while passing over in silence the more serious or shameful ones, is not very wise policy. If the more serious charges are true, it is better to let the whole libel pass unnoticed. (See *Cooke v. Hughes*, p. 95.)

A few words may be said about two peculiar species of defamation not hitherto referred to, namely, slander of title and *scandalum magnatum*.

SLANDER OF TITLE.

By slander of title, which is not, strictly speaking, defamation at all, is meant the publication of matter which does not reflect upon the character of the plaintiff, but which impugns the title by which he holds, or disparages the quality of his property.

When the matter published impugns the title by which the plaintiff holds his property, it is slander of title in the strict sense. In order that the publication of such matter may be good ground for an action, certain points must be established.

First, the matter itself must be false. If it turns out that the matter is true, there is no slander—it lies upon the plaintiff to shew that it is false.

In the second place the plaintiff must have suffered special damage through the publication of the slander. The only way in which special damage can be proved is by shewing that, owing to the slander, the plaintiff was unable to sell or was injured in the sale of the property in question, or in leasing it if it were land. Accordingly, if no sale is in contemplation at the time the

slander was published, no matter what imputations may be thrown on the plaintiff's title, no action lies.

3 Bing.
N. C. 371.
(1836.)

In *Malachy v. Soper and Another* the plaintiff was possessed of shares in a silver mine in Cornwall to the value of one hundred thousand pounds sterling. Certain persons had filed bills in Chancery claiming these shares, and praying that a receiver should be appointed. To these bills the plaintiff demurred. While the demurrers were still pending the defendants published in their newspaper an announcement to the effect that they had been overruled, that a receiver had been appointed according to the prayers of the petitions; and that persons duly authorized had arrived at the mine. The plaintiff thereupon brought an action for slander of his title to the shares. At trial the jury found for the plaintiff. On motion to arrest judgment the Court held that as no special damage had been alleged by the plaintiff to have resulted from the slander, the judgment must be arrested. Tindal, C.J., in delivering judgment said: "We hold . . . that an action for slander of title is not properly an action for words spoken, or for libel written and published, but an action on the case for special damage sustained by reason of the speaking or publication of the slander of the plaintiff's title."

A third condition is usually said to be necessary, namely, that the matter should be published maliciously—that is, in bad faith. The cases, however, by no means go so far as this. In all those in which it has been held necessary that the plaintiff should prove express malice, the slander of title has been published under circumstances which entitled it to privilege, that is, it was published by persons who had an interest in the thing in question, or who honestly believed they had. Where the slander was published by a person who neither had nor claimed an interest in the thing, no evidence of express malice was asked for. See, however, the remarks of Kay, L.J., in *Heath v. Stokes*.

L. T.,
Feb. 14,
1891,
p. 287.

In *Ravenhill v. Upcott* the action was brought against the proprietor of the *Wolverhampton Chronicle* for an advertisement published by it in the ordinary course of business. The plaintiff was in possession of certain land which he had advertised for sale, and while the sale was still pending the advertisement appeared. It was as follows: "Important Notice. Horsehill Estate. The public are respectfully requested not to buy any property formerly belonging to A. B. & C., without ascertaining that the title-deeds of the same are correct; as the heirs are not dead nor abroad, but are still alive." In consequence of this publication the estate became practically unsalable. The plaintiff on seeing it wrote complaining, and requesting the advertiser's name, which the defendant immediately forwarded. Nevertheless, the plaintiff brought action, not against the advertiser, but against the defendant. After action brought the defendant inserted an apology in his newspaper, and paid £60 into Court. In defence he pleaded this apology and payment. The plaintiff joined issue. Under Keating's, J., direction the jury found for the plaintiff.

33 J. P.
299.
(1869.)

See p. 156,
infra.

When the slander of title is a disparagement of the quality of goods offered by the plaintiff for sale, the same rules apply. To sustain the action, it is necessary to prove, first, that the matter published by the defendant was false, and, secondly, that the plaintiff suffered special damage through its publication. There is no need to prove actual malice, but at the same time it must be shown that the matter published was not a mere puff of the defendant's goods, but an unjust disparagement of the plaintiff's.

Western Counties Manure Co. v. Lawes Chemical Manure Co. was a case argued on demurrer. The plaintiffs' declaration was to the effect that the defendants falsely and maliciously published a statement in which the plaintiffs' goods were disparaged, and that special damage had resulted from this publication. *Held*, that this disclosed a good cause of action. Bramwell, B.: "It seems to me that where a plaintiff says,

L. R. 9 Ex.
218.
(1874.)

‘You have without lawful cause made a false statement about my goods, to their comparative disparagement, which false statement has caused me to lose customers,’ an action is maintainable.”

SCANDALUM MAGNATUM.

Another species of defamation which may just be mentioned is what is called *Scandalum Magnatum*. Under certain ancient statutes, words not actionable in themselves at common law, were made actionable when spoken of noblemen and persons holding high offices in the State. It is not necessary, however, that we should consider these further, because, in the first place, the statutes themselves have long been obsolete, no action having been brought upon them for over 180 years, and in the second place they refer only to spoken words.

3 Ed. I.
c. 34.

2 Rich. II.
st. 1, c. 5.

12 Rich. II.
c. 11.

CHAPTER III.

CIVIL PROCEDURE.

For a libel coming within the conditions laid down in the preceding chapters, there are at Civil Law two remedies. In every case the person libelled has an action for damages, and sometimes he may, in addition, obtain an injunction to restrain further publication of the libel.

It does not enter into the design of this book to give a detailed account of the proceedings in an action for libel; but it is necessary to call attention to one or two points which are of special importance in the case of actions against newspapers.

JURISDICTION.—Speaking generally, all actions for libel must be brought in the High Court of Justice. County courts have no original jurisdiction save by consent of both plaintiff and defendant. An action for libel, however, begun in the High Court may sometimes be remitted to the county court for trial under section 66 of the County Courts Act, 1888, which runs as follows:—

51 & 52
Vict. c. 43.

It shall be lawful for any person against whom an action of tort is brought in the High Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should the verdict be not found for the plaintiff; and thereupon a judge of the High Court shall have power to make an order that, unless the plaintiff shall, within

a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the Supreme Court, or satisfy a judge of the High Court that he has a cause of action fit to be prosecuted in the High Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy a judge as aforesaid, that the action be remitted for trial before a Court to be named in the order, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such Court, who shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the registrar to both parties or their solicitors; and the action and all proceedings therein shall be tried and taken in such Court as if the action had originally been commenced therein; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the High Court shall be allowed according to the scale of costs for the time being in use in the county courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

It will be observed that before a case can be remitted under this section three conditions must be fulfilled—(1) the defendant must prove that the plaintiff has no visible means to pay costs if the verdict goes against him; (2) the plaintiff must fail to shew that the case is one fit to be tried in the High Court; and (3) the plaintiff must fail or refuse to give such security for costs as the Court orders.

As to the first of these, it has been held that "visible means" here does not mean "tangible means," but such means as could be fairly ascertained by a reasonable person in the position of the defendant (*Lea v. Parker*).
13 Q. B. D. 835.

The second condition is that the plaintiff shall fail to shew a cause of action fit to be tried in the High Court.

By fit here is meant more fit to be tried in the High Court than in a county court: per Denman, J., in *Farrer v. Lowe & Co. & Medley*. 'The tendency of the Court is to regard all libel actions, save when the libel complained of is trivial in character, as possessing this superior fitness. Two cases may be cited.

In *Farrer v. Lowe & Co. & Medley* the plaintiff was a commercial traveller. The defendants, Lowe & Co., were merchants, in whose employ the plaintiff had been, and Medley, another commercial traveller, in the employ of Lowe & Co. The libel consisted in an accusation brought against the plaintiff of embezzling the money of the defendants, Lowe & Co., while in their employ. The defence of Lowe & Co. was justification; of Medley, no publication, privilege, and justification. The master had made an order to remit, against which the plaintiff appealed. The Divisional Court held that the cause was one fit to be tried in the High Court, and quashed the master's order.

5 T. L. R.
234.
(1889.)

Critchley v. Brown was an action for slander brought by a labourer's wife against another labourer. The alleged slander consisted of an imputation on the chastity of the plaintiff. The defendant denied publication, and pleaded privilege. Order to remit refused.

2 T. L. R.
238.
(1885.)

CONSOLIDATION OF ACTIONS.—As has already been pointed out, when a libel has been published in a newspaper, the proprietor, the printer, the publisher, the vendor, and every other person consciously engaged in circulating the libel, may be held severally responsible for it. Against each of these an action lies, and it is no defence in an action against one of them that damages have already been recovered or compensation accepted from some other one; though now, by sect. 6 of the Law of Libel Amendment Act, 1888, evidence of such a fact may be given in mitigation of damages. Similarly, when a libel has appeared or has been repeated in

See p. 163,
infra.

several newspapers, each appearance or repetition constitutes a new publication of the libel, for which separate actions will lie against the proprietor, printer, &c., of each newspaper. Thus, if a news agency sends out an item of news to a hundred different newspapers, and the statements contained in it prove to be unfounded and libellous, it may happen that the person libelled has rights of action against five or six hundred different persons. As this power was greatly abused by plaintiffs, a very necessary provision for the consolidation of such actions was introduced by the Law of Libel Amendment Act, 1888, which provides (sect. 5) that:

51 & 52
Vict. c. 64.

It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel, shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum; but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

POINTS WHICH MUST BE DISCLOSED.

PARTICULARS.—If the defence set up be one of justification or privilege, such defence must be specially pleaded, and all the material facts relied upon by the defendant must be set out in his particulars.

R. S. C.,
1883,
Ord. XIX.,
r. 15.

In *Belt v. Lawes* the action was for a libel published of the plaintiff in his profession and calling as a sculptor. In the statement of claim the plaintiff alleged that defendant “falsely and maliciously wrote and published” the said letter. The defendant in his reply admitted that he sent out the letter in question, but denied that he “wrote or published the same falsely or maliciously as alleged.” At Chambers, Kay, J., struck out the words “denies that he wrote or published the same falsely or maliciously as alleged.” The defendant appealed. *Held*, that the words were properly struck out of the defence on the ground that under them the defendant might set up a defence of justification or privilege without giving plaintiff notice of the defence he should have to meet.

51 L. J.
Q. B. 359.
(1882.)

In *Hennessy v. Wright* (No. 2) the plaintiff, Sir John Pope Hennessy, brought an action against the *Times* for a libel contained in a letter from Mauritius. The correspondent had alleged that Sir John, who was governor of Mauritius, had been charged by members of his council with sending to the Colonial Office garbled reports of their speeches, and it was alleged by the plaintiff that the correspondent imputed that he did in fact send such garbled reports. In defence the *Times* pleaded that the alleged libels were true in substance and in fact. *Held*, that Sir John was entitled to further and better particulars, it not being clear whether the defence meant that what was charged against the plaintiff had been truly reported, or that what was reported to have been charged was true.

57 L. J.
Q. B. 594;
59 L. T.
795; 36
W. R. 878.
(1888.)

INTERROGATORIES.—Either party is entitled to interrogate the opposite party as to his knowledge of any

24 Q. B. D.
p. 447.
(1889.)

facts which would tend either to support his own case or to destroy that of his adversary (per Lord Esher, M.R.). Before the Court, however, will order disclosure, it must be shown that the facts sought are really sought for the purpose of carrying on the case, and not merely in the hope of making out a case of some sort against a defendant, or in default of that, against or in favour of someone or other.

23 Q. B. D.
384.
(1889.)

Thus, where the action is against the proprietor, printer, or publisher of a newspaper, and the alleged libel consists of an anonymous article or letter published in the newspaper, the name of the author of the article or letter, or of the person upon whose information the article or letter is based, is not a material fact, and the Court will not order it to be disclosed (*Gibson v. Evans*).

24 Q. B. D.
441.
(1890.)

In the same way the negligence of the defendant, or his failure to take steps to verify the libel before publication, is not a material fact which should be disclosed. Strictly speaking, the issue in a libel case is not how badly the defendant has behaved, but how much damage the plaintiff has suffered (*Parnell v. Wright*).

W. N.
p. 239.
(1875.)

Again, though the plaintiff is entitled to interrogate the defendant as to whether the libellous statement in which no name is mentioned was intended to refer to him, he cannot go further and ask the defendant, if it was not intended to apply to him, to whom was it intended to apply (*Wilton v. Brignell*).

But it is not to be assumed that facts which the Court will not permit to be obtained by interrogatories will not be admitted in evidence at the trial.

Where the libel is admitted, and the only question is as to the amount of damages, and probably even in cases where the libel is not admitted, the plaintiff is entitled to

know the number, approximately, of copies of the libel which have been circulated.

Parnell v. Wright. This case may be cited at some length, as it shews very clearly the limitations which the Court places upon the plaintiff's right to interrogate the defendant. 24 Q. B. D. 441. (1890.)

The action was for a series of articles published in the *Times*, and republished in pamphlet form, containing amongst other things, letters alleged to have been written by the plaintiff. One of these letters was in effect a condonation of the Phoenix Park murders. In consequence of revelations made before a Special Commission, appointed to investigate the charges made, the *Times* withdrew the letters and apologized for having attributed them to the plaintiff. The plaintiff having brought an action, the *Times* paid into Court a sum of forty shillings, as sufficient to satisfy the plaintiff's claim.

The plaintiff administered the following interrogatories—

(1.) How many copies of each of the numbers of the *Times*, dated respectively, April 18, 1887, July 6, 1888, and July 7, 1888, were issued to the public and circulated by sale or otherwise?

(2.) At what date was the pamphlet entitled "*Parnellism and Crime*" first issued in that form as a separate publication to the public? At what date (if any) was the public circulation of the said pamphlet stopped? How many editions of the said pamphlet and how many copies of each such edition were issued and circulated by sale or otherwise between the said dates?

(3.) From what person or persons, and at what date or dates, did you, or some other and what person representing the *Times*, obtain the originals of each of the four alleged letters of the plaintiff set out in the statement of claim, and purporting to be dated respectively, May 15, 1882, January 9, 1882, and June 16, 1882?

(4.) What sum or sums of money, and at what date or dates, and to whom, did you, or any other and what person representing the *Times*, pay for each of the alleged letters or for all of them?

(5.) State precisely what inquiries you or any other and

what person representing the *Times*, made of the person or persons from whom the alleged letters and each of them were obtained—(a) as to the person or persons to whom the letters were addressed, or (b) as to the person or persons from whom, or the place in which, or the means by which the person or persons from whom the *Times* obtained the same had got possession of the alleged letters, or any and which of them.

(6.) State precisely what information, if any, was given to you or any other person representing the *Times*, and at what date or dates, by the person or persons from whom the alleged letters were obtained, and whether in answer to the inquiries suggested in the fifth interrogatory or otherwise (a) as to the person or persons to whom the letters were addressed, (b) as to the person or persons from whom, or the place in which, or the means by which the person or persons whom the *Times* obtained the same had got possession of the alleged letters, or any and which of them.

(7.) State precisely, with dates, the steps (if any) taken by you, or by any other and what person representing the *Times*, to test or verify the information (if any) given by the person or persons from whom the letters were obtained as to the several matters mentioned in the sixth interrogatory, or any of them.

(8.) State precisely what steps (if any), and whether by comparison of handwriting or otherwise, and how, were taken by you, or any and what person representing the *Times*, between the date when the said alleged letter of May 15, 1882, was obtained by the *Times* and April 18, 1887, to ascertain or test the genuineness of the said alleged letter.

(9.) State precisely what steps (if any), and whether by the comparison of handwriting or otherwise, and how, were taken by you, or any and what person representing the *Times*, between the date or dates when the alleged letter of January 9, 1882, and the two alleged letters of June 16, 1882, were obtained by the *Times* and July 6 and 7, 1888, or either of the two last-mentioned dates, to ascertain or test the genuineness of the said three alleged letters, or any and which of them.

(10.) When did you, or any and what person representing the *Times*, first learn, and how, that the alleged letters, or any and which of them, had been obtained by the person or persons from whom the *Times* obtained the same from and through Richard Pigott? What inquiries (if any) did you then or subsequently, and when, make, and of whom, and how, as to the antecedents or character or repute of Richard Pigott?

The defendant practically declined to answer any of these interrogatories. The master in chambers ordered answers to all of them. On appeal the Court (Denman and Wills, JJ.) ordered answers to the first and second, and refused to allow the others.

Again in *Ridgway v. Smith* the plaintiff sued the defendants for an alleged libel which had appeared in the London edition of the *New York Herald*. The defendants pleaded that they were booksellers and had sold the newspaper containing the alleged libel in the ordinary course of their business; that neither they nor their servant knew at the time they sold the paper that it contained a libel upon the plaintiff, that it was not through negligence that they did not know; and that they did not know that the paper was of such a character that it was likely to contain a libel. The plaintiff administered the following interrogatories:

Times,
16th April,
1890.

“What precautions are taken in your business against selling newspapers containing libels? Are any and what further precautions taken by your firm in order to ascertain whether a newspaper contains libels if it is brought to the knowledge of your firm that one or more actions for libel have been successfully brought against such papers?

“Have any and what members of your firm, or persons in its employment, any special duty imposed on them by the firm of ascertaining whether newspapers sold by the firm have in fact contained libels, or are likely to contain libels, or have had actions for libel successfully brought against them?

“Were not some and which members of your firm, or some persons employed by it, aware that some actions for libel had been brought in respect of the *New York Herald*, London edition?”

These interrogatories were disallowed by the Court without calling upon the defendant's counsel.

When the only defence set up is a plea of fair comment on matters of public interest no interrogatories will be allowed which go to prove the truth of statements of facts contained in the alleged libel, though these are such as would be admissible had the defence been a justification.

Times,
13th June,
1890.

In *Lord Hindlip and Others v. Mudford and Others* the action was for an alleged libel upon the plaintiffs contained in a leading article in the *Standard*. The article in question commented severely on the sale of the plaintiffs' brewery—Allsopp and Sons—to a joint stock company and asserted that at the sale all the facts concerning the business were not disclosed, and that as a matter of fact the business was then a “dwindling” one. The plaintiffs having brought an action for libel, the defendants pleaded fair comment. The defendants administered the following interrogatories to the plaintiffs.

(1.) Were not the business of the Limited Liability Company of Samuel Allsopp and Sons and the circumstances under which the company was brought out the subject of public comment in the public newspapers and elsewhere, both at and after the issuing of the prospectus in February, 1887, and also shortly before the publication of the alleged libel?

(2.) In particular was it not made the subject of public comment in February and March, 1887, that the business was a declining business, and was it not stated in the *Economist* of February 26, 1887, and also in the *Financial News* and other papers about that time, that the number of barrels brewed by the firm of Allsopp and Sons for the six previous years were as follow :—Year ending September 30, 1886, 650,100; 1885, 737,600; 1884, 824,600; 1883, 813,600; 1882, 793,000; 1881, 874,300?

(3.) Were not the said statements and comments, and in particular the statement of the number of barrels alleged to have been brewed, brought to the notice of the plaintiffs or

some one of them, or of the company and its officers at the time, or how soon afterwards was any denial of them or their accuracy, or were they corrected to any and what extent in any and what public newspaper, or on any and what public occasion? Was not the said statement as to the number of barrels brewed in fact substantially correct? If not, give the correct figures for the years mentioned, and give the figures also for each of the years since 1886.

(4.) Were not comments also made in the public newspapers about the same time as to the causes of the decline? What were the causes or cause of the decreased number of barrels brewed and sold in the years 1885 and 1886, and what were the causes or cause of the decrease, if any; since when did such causes begin to operate?

(5.) Have the sales during the years 1881-1889 been as a rule proportionate to the number of barrels brewed? If not, set out sales for each of the said years.

(6.) Have there been any changes in the discount allowed to publicans and other customers since 1884; if so, at what dates did the changes take place, and what changes were made?

The Divisional Court (Lord Coleridge, C.J., and Wills, J.) held that such of these as sought to prove that other newspapers had contained statements concerning the plaintiffs were not admissible under any defence, and that as to the others which went to prove the truth of the statements contained in the defendant's newspaper, while they would be admissible had the defence been a justification, they were irrelevant when the defence was not a justification, but only fair comment. Accordingly the Court confirmed the order that all the interrogatories should be struck out under Order xxxi., Rule 7.

R. S. C.

The rule that the defendant in an action for libel is bound to answer any interrogatory as to facts material to the issue is subject to the further limitation that no one is bound to answer any question the answer to which may tend to criminate himself. Every libel, as will be explained in the next chapter, is, strictly speaking, a

crime, and consequently in an action for libel the defendant may take advantage of the rule of law by which he is entitled to refuse to disclose any fact which would tend to lay him open to an indictment. Thus he may decline to state whether he is the author of the alleged libel, or, if the alleged libel appeared in a newspaper, whether he was editor of that newspaper at the time the libel appeared, or what position on the staff he occupied. This is most important, as it sometimes renders it difficult, if not impossible, to fix the responsibility on the actual writer of a libel, or on the editor, sub-editor, or other member of the staff of the newspaper in which it appeared.

The protection afforded by this rule is, however, modified, so far as the "printer, publisher, or proprietor" of the newspaper is concerned, by 6 & 7 Will. IV., c. 76, s. 19, which section was re-enacted by 32 & 33 Vict. c. 24, schedule 2, and is therefore still in force, although the original statute was repealed by 33 & 34 Vict. c. 99.

Sect. 19 provides that—If any person shall file any bill in any Court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required; provided always that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

This enactment, it is well to note, applies to Ireland.

In *Carter v. Leeds Daily News and Jackson* the following

interrogatories were filed on behalf of the plaintiff, to be answered by an officer of the "Leeds Daily News Company, Limited," and by the defendant Jackson.

(1.) Is the defendant, William Lauries Jackson, the editor or publisher of the *Leeds Daily News*, and what position does he occupy in respect of the said newspaper?

(2.) Is the said William Lauries Jackson a shareholder in the said company?

(3.) Is it the duty of the said William Lauries Jackson to exercise a supervision over paragraphs of the nature of those set out in the statement of claim?

(4.) Did the said William Lauries Jackson write, or have anything to do with writing of, any and which of the paragraphs mentioned in the statement of claim; and, if not, who was the writer of such paragraphs and each of them?

(5.) Did the said William Lauries Jackson see any and which of the said paragraphs before they were inserted in the newspaper or before the newspaper was published or circulated, and did he sanction the publication of the said paragraphs, or of any and which of them?

(6.) By whom, and in what way, were the said paragraphs brought to the office of the newspaper company; or were they received by anyone else, and whom, on their account, at one time; and, if not, when were they received?

(7.) Were the numbers of the *Leeds Daily News* of the 13th August, 1875, 19th August, 1875, 10th September, 1875, and the numbers of the *Leeds Daily News* containing the paragraph commencing with the word "Query," printed and published by the "Leeds Daily News Company, Limited," or by the defendant William Lauries Jackson or by both of them?

At chambers, Archibald, J., struck out, in paragraph 1, the words "editor or" and "and what position does he occupy in respect of the said newspaper," and the whole of paragraphs 4 and 5. In view of recent decisions (*Parnell v. Wright*, *Supra* *Hennessy v. Wright*), it is probable that paragraphs 3 and 6 also would now be disallowed.

The proper course now when the defendant objects to answer any interrogatory, is not to apply to the Court to

R. S. C.,
Ord. XXXI
r. 6.

- Rule 7. have it struck out, but simply to take objection in the affidavit in answer. It is only when the interrogatories are objected to as a whole that an application should be made to set them aside (*Sammons v. Bailey*).
- L. T., 17th
May, 1890.

DEFENCES.

In most libel actions the defence relied on is that the publication complained of does not fulfil some of the conditions already set forth as necessary in order to make a publication actionable. The defendant may plead that he was not a party to the publication; that the matter published is not defamatory; that it does not refer to the plaintiff; that it is privileged; or, finally, that it is true in substance and in fact. Even when the publication complained of does fulfil all these conditions, however, there may still be more than one valid defence.

These defences may be placed under four heads: (a.) Release by the plaintiff; (b.) Reparation by the defendant; (c.) *Res judicata*; (d.) Limitation.

RELEASE BY THE PLAINTIFF.—The cause of action which the publication of a libel gives the person libelled against the libeller may be parted with by the plaintiff himself for valuable consideration. In other words he can grant a release of it by means of a deed, or he can agree to give it up either in return for a money payment, or an apology, or any other consideration of value, but at the time he accepts the consideration he must be aware of the extent and nature of the wrong which has been done him.

S T. L. R.
244.
(1896.)

In *Marks v. Conservative Newspaper Company* the defendants published an account of certain judicial proceedings in which severe reflections were thrown on the plaintiff in the

judge's remarks. The plaintiff, on seeing it, went to the defendants' office and there wrote a reply to those observations, which the defendants inserted in their paper. The plaintiff thereupon expressed himself as satisfied. Afterwards, however, he discovered that the reflections which in the report the judge was made to throw upon the plaintiff, had, as a matter of fact, never been uttered by the judge. Thereupon the plaintiff brought an action for libel against the defendants, who pleaded accord and satisfaction. The judge (Lord Coleridge, C.J.) allowed the case to go to the jury, who found for the plaintiff.

CONFESSION AND AMENDS.—Confession and amends is not strictly speaking a defence. It is really an admission that the plaintiff has been libelled, together with a payment into Court, or a payment into Court and an apology for the wrong done to him. By Order xxii., Rule 1, of the Rules of the Supreme Court, a defendant cannot pay money into Court in respect to a libel, and at the same time set up a defence denying all liability. He must admit that the plaintiff has just cause of complaint. That, however, does not mean that he admits everything of which the plaintiff complains. It seems clear that where the libel complained of consists of two or more distinct and separable statements, the defendant may admit that some of these statements are indefensible and pay money into Court in respect to these, while he sets up a defence of justification or privilege as to the others (see *Fleming v. Dollar*). Or, while admitting that the original statement is libellous, he may pay money into Court in respect of it while he denies the plaintiff's innuendo. Or, after payment into Court, defendant may at trial offer evidence of plaintiff's character in mitigation of damages.

Confession and amends may consist, as has been

23 Q. B. D.
388.
(1889.)

said, either simply of a payment into Court or of a payment into Court accompanied by an apology to the plaintiff. In the former case, the payment into Court should be made before the defence is delivered, as otherwise it cannot be made without the leave of a master, and notice of the payment should be given to the plaintiff. In the latter case, when the libel complained of appears in a newspaper, the defendant should proceed as required by sect. 2 of Lord Campbell's Act.

6 & 7 Vict.
c. 96.

By that statute, in an action for a libel in "any public newspaper or other periodical publication," the defendant may plead that the libel was inserted without actual malice or gross negligence, "and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or if the newspaper . . . should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action . . . and that to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea."

By sect. 2 of an amending Act passed two years later (8 & 9 Vict. c. 75) an apology under this section must be accompanied by a payment into Court; "every such plea so filed without payment of money into Court shall be deemed a nullity, and may be treated as such by the plaintiff in the action." It would appear, however, that under sect. 1 of the Act first quoted, which applies to "any action for defamation" whether the matter complained of appeared in a newspaper or otherwise, an

apology may still be tendered unaccompanied by payment into Court, but in this case it is only available in mitigation of damages.

The sufficiency alike of the payment into Court and of the apology under sect. 2 of Lord Campbell's Act is a question for the jury.

In *Risk Allah Bey v. Johnstone* the action was against the *Standard* for a libel contained in a leading article commenting on a report of the plaintiff's trial. The defendants, not considering the article to be strictly justifiable, offered to publish an apology. The solicitor for the plaintiff thereupon sent an apology filling sixteen brief sheets. This the defendants declined to publish, but they published an apology of their own composition, which entered fully into the facts of the case, and occupied one column of the newspaper. The plaintiff was not satisfied with this, and brought an action for libel. The defendants pleaded that the libel was published without gross negligence or actual malice, and that they had apologised for it; and they paid 20s. into Court. Cockburn, C.J., in summing up to the jury said, that these were the questions to be decided: First, was there an absence of malice? Secondly, was there an absence of negligence? And thirdly, was the apology sufficient? If on any one point the plea failed, the plaintiff was entitled to recover; but if it was sustained on all, then the only question would be whether the action was not in substance answered? The jury found for the defendants, and the judge declined to stay execution for defendants' costs.

18 L. T.
620.
(1868.)

RES JUDICATA.—If a previous action has been brought by the same plaintiff for the same libel against the defendant or any person jointly concerned with him in the publication of the libel, and judgment has been given in that action, that will be a good defence whether the plaintiffs recovered damages, or whether having recovered damages they were satisfied, or whether the action was dismissed, except in the latter event it was dismissed on

L. R. 7
C. P. 547.
(1872.)

a technicality, and the judge expressly stated that the dismissal was only a nonsuit at common law (*Brinsmead v. Harrison*).

Three points are to be here noticed. In order that the judgment in a previous action may act as a bar, that previous action must have been brought by the *same* plaintiff against the *same* defendant or some one jointly concerned with him for the publication of the libel, and for the *same* libel. Each of these calls for a few words.

R. S. C.,
2 Q. B. D.
496.
(1877.)
8 C. & P.
708.
(1838.)

The previous action must be by the same plaintiff. The fact, however, that the same person has brought an action previously as a joint plaintiff may not prevent him bringing a second action as an individual plaintiff for the same libel, and *vice versa*. Thus, if a libel be published concerning a firm, the members of the firm may proceed jointly for the injury done to the firm, and severally for the injury done to each one personally. Formerly, indeed, they could proceed in no other way, but now, under Order XVIII., Rule 6, claims by plaintiffs jointly may be joined with claims by them separately against the same defendants (see *Booth and others v. Briscoe*; *Harrison v. Bevington*).

2 F. & F.
123.
(1860.)
Infra.

In the next place the previous action must have been brought against the same defendant, or some one jointly concerned with him for the publication of the libel. When are persons jointly concerned in the publication of a libel? This is a very important question in the case of libels in newspapers, but it is one on which there is very little authority. It has been held that author and publisher are not jointly concerned (*Frescoe v. May*). And in *Martin v. Kennedy* and *Banning v. Perry* it was held that actions against the printer or publisher did not prevent others against the proprietor and *vice versa*.

But where the newspaper is owned by partners a judgment against one partner will be a bar to an action against any of the others (*Munster v. Cox*; and see *Duke of Brunswick v. Pepper*). In consequence of sect. 6 of the Libel Law Amendment Act, 1889, this point is now of less importance than formerly.

1 T. L. R.
542.
(1885.)
2 C. & K.
683.
(1848.)

In *Martin v. Kennedy* and *Banning v. Perry* the facts were peculiar. There Martin and Banning complained of two libellous advertisements which had appeared in a newspaper called the *Morning Chronicle*, of which the defendant Kennedy was printer, the defendant Perry proprietor, and a person called Lambert publisher. Martin brought an action against Perry, and another against Lambert, in both of which he recovered damages. Banning brought an action against Kennedy, and another against Lambert, in both of which he recovered damages. Now Martin brought an action against Kennedy, and Banning against Perry for the same libel. The defendants applied to have the actions set aside in a summary way, on the ground that these actions were for wrongs for which both plaintiffs had already obtained satisfaction from other parties. *Held*, that the Court would not interfere.

2 Bos. &
Puller,
69.
(1800.)

In the third place the previous action must have been for the same libel. On this point *Macdougall v. Knight* is important.

25 Q. B. D.
1.
(1890.)

In that case, which has been already referred to, the plaintiff having failed in an action against the defendant Knight, for libel in publishing the report of a judgment against the plaintiff, which contained strictures on the plaintiff's conduct, and which was subsequently reversed, brought another action for libel based on the same publication. In his statement of claim in the first action the plaintiff had set forth certain passages of the judgment. In his second action he set out different passages. The plaintiff then took out a summons to have the statement of claim struck out as frivolous and vexatious, on the ground that if the action were allowed to

proceed a plea of *res judicata* must be successful. The Court took this view. Fry, L.J., said: "Both actions are for libel contained in a pamphlet, and, therefore, I conclude the cause of action is the same. In my opinion, it is impossible that two actions should be properly brought in respect of the same libel. The injustice of allowing a litigant to select one portion of a libel as the ground for one action, and another as the ground for a second action, and so on, indefinitely, is obvious. The whole publication would be before the jury in each case. It would be quite impossible for the jury in each case to separate the damages due to the particular part of the libel relied on in the case from the damages arising from other parts of the libel. I think, therefore, that a plea of *res judicata* would succeed, and that we are bound to stay the action. Suppose, however, this to be otherwise, still in such case I do not hesitate to say that such successive actions in respect to the same libel would be an abuse of the process of the Court, and so, *quâcunque viâ*, the application should succeed, and the action be stayed."

LIMITATION.—When more than six years have elapsed since the last publication of the libel, it ceases by the Statutes of Limitations to be actionable, unless at the time of publication the plaintiff was under disability or the defendant was beyond the seas, in which case the libel will continue to be actionable for six years after the removal of the disability or the defendant's return (21 Jac. 1, c. 16, s. 3; 4 & 5 Anne, c. 3 (al. c. 16), s. 19; 19 & 20 Vict., c. 97, ss. 10 & 12).

DAMAGES.

It would be useless to attempt to lay down any rule as to the measure of damages. What damages shall be given is a question entirely for the jury, their discretion in the matter being limited only by the power of the Court of Appeal to set aside their verdict in cases where the damages appear to be grossly inadequate or

grossly excessive. Where there is a cause of action, but the damages awarded are excessive, the Court may with the plaintiff's consent reduce them without ordering a new trial, whether the defendant consents or not (*Bell v. Lawes*).

12 Q. B. D.
356.
(1884.)

In the recent case of *Praed v. Graham*, Lord Esher thus stated the principle on which the Court would act in setting aside a jury's verdict, on the ground that the damages awarded were excessive: "The first question is, what is the rule of conduct which should be followed by the Court—either a Divisional Court or the Court of Appeal—to which an application is made in such an action as an action for a libel to set aside the verdict on the ground that the damages given by the jury are excessive? I think that the rule of conduct is as nearly as possible the same as when the Court is asked to set aside a verdict on the ground that it is against the weight of evidence. If the Court, having fully considered the whole of the circumstances of the case, come to this conclusion only: 'We think that the damages are larger than we ourselves should have given, but not so large as that twelve sensible men could not reasonably have given them,' then they ought not to interfere with the verdict. If, on the other hand, the Court thinks that, having regard to all the circumstances of the case, the damages are so excessive that no twelve men could reasonably have given them, then they ought to interfere with the verdict. If the authorities are looked at, that will be found to be the rule of conduct which the judges have adopted. If the Court can see that the jury, in assessing damages, have been guilty of misconduct, or made some gross blunders, or have been misled by the speeches of counsel, those are undoubtedly sufficient grounds for interfering with the verdict; but they come within the larger rule of conduct which I have laid down, and are grounds which are included in the rule."

24 Q. B. D.
53.
(1889.)

EVIDENCE IN AGGRAVATION.—A more important question is what evidence will the Court admit in aggravation or in mitigation of damages?

In the first place, with a view to increasing the damages, evidence may be given of every circumstance which tends to aggravate the libel. The plaintiff may prove that he suffered actual damage in his trade or profession by showing a diminution of business (*Ingram v. Lawson*); or, he may prove that he suffered much mental pain and wrong in consequence of the libel (*Lynch v. Knight and Wife*).

6 Bing.
N. C. 212.
(1840.)

9 H. L. C.
598.
(1861.)

Supra.

Again, he may give evidence to show gross carelessness or malice on the defendant's part (*Parnell v. Wright*); or, he may prove that the libel was scattered broadcast, or very widely circulated (*idem*); or, he may prove that when the defendant published the libel he knew that it would be repeated in other quarters

24 Q. B. D.
630.
(1890.)

(*Whitney v. Moignard*).

EVIDENCE IN MITIGATION.—On the other hand, the defendant is entitled to give in mitigation evidence of every circumstance which makes the publication less heinous. Of these, the most important are: absence of gross carelessness or of actual malice, and the character of the plaintiff. In case such evidence is to be tendered, particulars of the matter concerning which evidence is to be given must be furnished to the plaintiff at least seven days before trial, otherwise the evidence will only be admissible with leave of the judge: Order xxxvi., Rule 37.

R. S. C.

Page 156.

The defendant may, as has already been pointed out, bring forward evidence of an apology given or tendered in mitigation of damages.

As a general rule previous publication of the libel cannot be proved in mitigation of damages. Every repetition of a libel is a new wrong to the defendant,

and the fact that the libel had appeared before is, generally speaking, irrelevant in an action for the new wrong (*Saunders v. Mills*). There are, however, two exceptions to this. The first is, when the repetition is on the face of it a mere repetition, as when one newspaper quotes another as its authority for the libel (*Duncombe v. Daniell*). Another exception exists where the repetition, though not appearing on the face of it to be a repetition, really is a quotation from another publication, with some of the original charges omitted or modified. In both these cases evidence of the previous publication may be given to negative malice (*De Bensaude v. Conservative Newspaper Co.*).

6 Bing.
213.
(1829.)

8 C. & P.
222.
(1866.)

3 T. L. R.
538.
(1887.)

Formerly, not merely previous publication, but the fact that the plaintiff had already received damages for that previous publication was irrelevant. The law, however, has, as already stated, been altered on this point by section 6 of the Law of Libel Amendment Act, 1888, which runs as follows:—

51 & 52
Vict. c. 64.

At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received, or agreed to receive, compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Three points are worthy of notice in this important section. In the first place, like all the provisions of this Act and that of 1881, it only applies in actions against newspapers appearing at intervals not exceeding twenty-six days. In the second place, evidence may be given, not merely that damages have been recovered, but that an action has already been brought, or compensation

See page 2.

accepted for the same libel ; accordingly, if the previous action had resulted in a verdict for the defendant that verdict could be proved. Thirdly, it would appear that though only newspapers benefit by this enactment, the previous action need not have been against a newspaper.

COSTS.

Libel actions are usually tried before a jury, though, by the Rules of Court, unless notice for a jury be given, they are to be tried before a judge without a jury (R. S. C., Order xxxvi., Rule 2).

When they are tried before a judge the costs are in his absolute discretion ; when tried before a jury the costs follow the event, unless the judge sees good cause to order otherwise, in which case he can refuse the successful party his costs or even direct him to pay the costs of the unsuccessful party. The last course, however, is one seldom taken, except in cases of very gross misconduct.

4 Q. B. D.
611.
(1879.)

In *Harris v. Petherick*, the plaintiff sued the defendant for £85 commission and 6s. for an advertisement of a sale. He was non-suited. He brought a second action for the same claim, and the jury awarded him the 6s., but found for the defendant as to the £85. The judge ordered the plaintiff to pay the defendant's costs in both actions. On appeal this order was affirmed.

“Good cause” is a question of fact upon which the parties may appeal.

INJUNCTIONS.

It would seem that at all times the Court has had power after the verdict to grant an injunction to restrain

the further publication of matter which the jury had found libellous (*Saxby v. Easterbrook*). Within the last few years, however, the Chancery Courts have taken upon themselves to restrain by an interim injunction the publication of matter on which a jury has never had an opportunity of pronouncing an opinion. 3 C. P. D.
339.
(1878.)

Such injunctions are now not infrequently granted in the Chancery Division on the interlocutory application of one of the parties to an action. Before granting an injunction, however, the Court must be satisfied that the matter is such as a jury would or should find libellous, that it is in substance false, and that it is not privileged, or if privileged, that it is published maliciously.

In the *Quartz Hill Consolidated Gold Mining Co. v. Beall*, Jessel, M.R., said: "There is jurisdiction in a proper case upon interlocutory application to restrain the further publication of a libel. But the question as to whether the jurisdiction, though existing, has been properly exercised is quite different. It is a jurisdiction which must be very carefully exercised. No doubt there are cases in which it would be quite proper to exercise it, as, for instance, the case of an atrocious libel wholly unjustified and inflicting the most serious injury on the plaintiff. But, on the other hand, where there is a case to try, and no immediate injury to be expected from the further publication of the libel, it would be very dangerous to restrain it by interlocutory injunction." 20 Ch. D.
507.

The question of interim injunctions in the case of alleged libels was considered at some length in the *Liverpool Household Stores Association v. Smith*. The plaintiffs were a limited joint-stock company, with a nominal capital of £100,000, of which about a third was actually subscribed. Owing to a dispute as to the premises which should be bought to carry on the proposed business of the company, two of the directors resigned. In consequence, various meetings of shareholders were held, at which considerable heat prevailed. Shortly after these meetings the *Liverpool Mercury*, which had pub- 37 Ch. D.
170.
(1887.)

lished accurate reports of them, inserted several letters from shareholders, in which the affairs of the company and the conduct of the directors were somewhat severely canvassed. It was admitted by the defendants that these letters were not accurate in all details. The plaintiffs brought an action for libel, and applied for an interim injunction to restrain the defendants from publishing any articles, letters from correspondents, or other matter containing imputations on the solvency of the company, or on its ability to carry on business with success, &c., &c. The defendants resisted this motion on the ground that the letters complained of were inserted, without negligence or malice, upon matters of interest affecting a public company which had invited the public to take its shares, and which was of considerable interest to the Liverpool public. Kekewich, J., while refusing the injunction asked for, on the ground of the difficulty of framing an injunction which would not include matters which might turn out not to be libellous, at the same time said that there could be no doubt that the Court was entitled to grant an interim injunction in libel cases where irreparable injury might be done by the publication of the libel before the trial came on. The plaintiffs appealed, but the Court of Appeal affirmed the decision, without calling on defendant's counsel. Cotton, L.J., in the course of his judgment, pointed out that the injunction asked for was not for restraining the republication of the reports of the meetings of shareholders and the letters of shareholders which had already appeared, but to restrain the publication of any future reports or matter—a very different thing. “In *Coulson v. Coulson* the Master of the Rolls said that to justify the Court in granting an injunction, it must come to a decision on the question of libel or no libel before the jury decided whether it was a libel or not; that the jurisdiction, therefore, was of a delicate nature, and ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where, if the jury did not so find, the Court would set aside the verdict as unreasonable. That is what the Master of the Rolls said with reference to an existing document brought before the Court, and Lord Justices Lindley and Lopes concurred in

3 T. L. R.
846.
(1887.)

that ruling. Now in the case of an existing document brought before the Court, the Court can judge of its character; but how can the Court judge whether documents which are not yet in existence will be libellous? In my opinion it would be very dangerous to grant an interlocutory injunction with reference to future publication, unless we could lay down definitely some line which would include only the publication of what would necessarily be libellous. In my opinion it would be very unadvisable to grant any injunction which would restrain fair discussion in the newspapers of matters of importance, like that of the probable success or failure of a public company. . . . I think that a newspaper occupies a peculiar position, especially with regard to matters concerning the interest of those amongst whom the newspaper circulates, such as the discussion of the condition of a company like this. I do not say that any statements or letters printed in the defendant's newspaper, making reflections of the character indicated in the notice of motion, will not be libellous; but I cannot say that the jury would necessarily find them to be libellous."

In the recent case of *Bonnard v. Perryman*, the plaintiffs applied for an injunction, first to restrain the defendants from continuing to publish an alleged libel which had appeared in the defendant Perryman's newspaper; and, secondly, to restrain the defendants from publishing further libels of a similar kind until the action then pending between the parties had been disposed of. The plaintiffs in their affidavits denied the truth of the libel, and the defendants who had pleaded justification in the action filed affidavits averring that at trial they would produce evidence to prove their plea. North, J., however, taking all the circumstances of the case into consideration, declared himself satisfied that no jury would find a verdict for the defendants, and accordingly granted an injunction restraining the further circulation of the libel already published, but refused it as to future libels.

Times,
Mar. 4,
1891.

CHAPTER IV.

LIBEL AS A CRIMINAL OFFENCE.

IN the preceding chapters libel has been discussed from the point of view of the civil courts, as a matter of wrong or injury between individual and individual. There is, however, an older, and in a sense a more important, side to the question ; that of libel as it affects the public peace, coming, as it then does, within the scope and cognizance of the criminal courts. At one time criminal libels, or public libels as they may be called, especially in the shape of government prosecutions for blasphemy, sedition, and so forth, were the class of libels that came most frequently before the courts, and this is still the case in most foreign countries. Nowadays, however, the criminal law is very rarely put in motion by the State, and in the case of newspaper libels, private persons can only invoke it, as we shall see presently, with the consent of a judge in chambers.

The criminal law regards libel from a standpoint essentially different from that of the civil law. The latter considers it simply as an injury to the individual, the former as an injury to the State. It follows that each system has its own tests, by which it defines the scope and limits of its cognizance. The test of the civil law is : has the defendant injured the plaintiff's legitimate reputation ? The test of the criminal law is, has the defendant in publishing the libel done an act

likely to lead to a breach of the peace, or to outrage the public conscience, or good morals, or to endanger the safety of the State?

Of these two tests, that of the criminal law is evidently the wider: it includes all publications which satisfy the civil law tests and many others which do not, so that while every publication which is libellous at civil law is also libellous at criminal law, the reverse does not hold.

CLASSES OF CRIMINAL LIBELS.—Criminal libels may best be divided into two classes, defamatory libels, and disorderly libels. The first class consists of those which are primarily attacks upon private character. These are, generally speaking, at the same time actionable wrongs, and are only indictable because they are calculated to provoke the person whose character is assailed to a breach of the peace. Libels of the second class are primarily outrages on the public conscience, or good morals, or on the safety of the State. No individual being specially injured by them, they are never actionable. They are purely criminal libels.

Before discussing these classes separately, two points may be mentioned which affect them both.

RESPONSIBILITY IN CRIMINAL LIBEL.—The most important of these is with regard to the liability for publication. Who may be held liable, criminally, for the publication of a libel?

In civil law, as we have seen, in the case of a libel appearing in a newspaper, the registered proprietor, the printer, the publisher, the author, the editor, the vendor, and every other person consciously concerned in preparing or circulating it, are each and all regarded as

parties to the publication, and responsible in damages for it. The criminal responsibility, however, which was at one time, presumptively at least, the same as the civil, has been subjected to a very important modification by section 7 of Lord Campbell's Act. This section, which, be it noted, is not, like section 2 (apology and payment into Court), restricted to "public newspapers and other periodical publications," but applies to publications of every sort, runs as follows:

6 & 7 Vict.
c. 96, s. 7.

And be it enacted, that whensoever, upon the trial of any indictment or information for the publication of a libel under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

The practical effect of this enactment, as shown by the decisions upon it, is to free from criminal responsibility for a libel every one presumptively responsible for the publication who is not personally engaged in publishing it and not consciously or by criminal negligence a party to its publication. The proprietor who takes no active part in the management of his newspaper is the person who most often benefits by this, but occasionally other persons come within its protection too as will appear from the following cases.

3 Q. B. D.
60, and 4
Q. B. D.
42.

(1878.)

In *R. v. Holbrook and Others*, a criminal information had been obtained against the proprietors of the *Portsmouth Gazette* for a libellous letter which appeared in the newspaper. At the trial it was shown that the letter in question had been inserted without the actual knowledge or consent of the defendants—indeed, one of them was absent from Ports-

mouth at the time of publication—but it was admitted that they had given the editor a general authority to conduct the paper and to decide what should be published and what not, and that he inserted the letter in question. At the trial at Winchester, before Lindley, J., a verdict was returned against all the defendants. This verdict was set aside and a new trial ordered. The second trial took place before Grove, J., who, in summing up, left it to the jury to say whether the general authority to the editor included an authority to publish the libel complained of. The jury found all the defendants guilty.

On motion for a new trial, Cockburn, C.J., and Lush, J.—Mellor, J., dissenting—held that the “authority” mentioned in the 7th section must be read as authority to publish the libel, and that the general authority given to the editor, to use his discretion in admitting or rejecting articles or correspondence, was not in itself sufficient under the circumstances to make the proprietor criminally responsible.

Cockburn, C.J., in delivering judgment, pointed out that the doctrine did not mean that a proprietor could not be held criminally liable for a libel appearing in his paper unless he actually authorised its insertion. A general authority to insert libellous matter, or a knowledge that libellous matter had been inserted frequently by the editor with no consequent action on the proprietor's part, or any negligence on the proprietor's part such as the employment of a notoriously incompetent or untrustworthy editor, or habitual neglect to inquire how the newspaper was conducted; these and all similar circumstances were evidence from which the jury might infer a tacit authority from the proprietor to publish the libel, and so might render him criminally liable for it. But the mere circumstance that the editor had a general discretion as to what should be inserted was not in itself enough to support a verdict against him under the Act, as the summing up of Grove, J., in this case might have led the jury to believe. A new trial was accordingly necessary.

The case of *R. v. Ramsay and Foote* is important as bearing on the criminal liability of the publisher and editor of a newspaper in which a libel has appeared. In this Ramsay, the publisher, and Foote, the editor, of a paper called the

15 C. C. C.
231.
(1883.)

Freethinker were indicted for a blasphemous libel alleged to have been published in that paper. It was there held by Lord Coleridge, C.J., that proof that Ramsay was the person registered as proprietor and publisher of the paper was not sufficient to prove him criminally liable. Evidence, however, that he himself had sold a copy of the paper containing the alleged libel was sufficient to establish a *prima facie* case against him. As to Foote, evidence that he was the editor at the time the libel was published was not sufficient. It was necessary to shew that the libel had been inserted with his express consent, or by his express direction. His lordship, adopting the language of Lush, J., in *R. v. Holbrook*, held that the question of authority to publish in criminal cases is now not a presumption of law but a question of fact.

15 C. C. C.
217.
(1883.)

In *R. v. Bradlaugh* the point was whether a person who allows his publishing house to be used for the publication of a newspaper, the general character of which he knows, is a sufficient authority to publish to render him criminally liable for a libel appearing in that newspaper. The defendant in this case had been jointly indicted with Foote and Ramsay for the alleged blasphemous libel mentioned in the last case, but on the plea that he was not connected with the *Freethinker*, it was held that he was entitled to a separate trial (Ramsay and Foote being previously convicted for publishing a libel in that paper). Mr. Bradlaugh admitted that he knew the general character of the paper, that it was published in his publishing house, and by Ramsay, who was employed by him in connection with his own journal, and who received less pay since he had established the *Freethinker*. On these facts, Lord Coleridge held that there was evidence on which the jury might acquit Mr. Bradlaugh. The jury acquitted.

32 Geo 3,
c. 60.

FOX'S LIBEL ACT.—Another point in common may just be referred to. Previous to Fox's Libel Act it was the practice for the judge to leave to the jury two questions. First, had the prisoner published the alleged libel? Secondly, did it bear the meaning put upon it by the innuendo? If the jury found these two points in the affirmative, then it was for the Court to determine

whether the matter was libellous or not. Since that Act, though the judge may state his opinion to the jury and advise them as he thinks right, they are entitled to return a general verdict of guilty or not guilty. This, however, does not preclude the jury from returning a special verdict if they think proper to do so.

It may be added that in criminal law there is no joint responsibility. Accordingly, every one consciously a party to the publication of a libel is at common law liable to prosecution, and the fact that some other person who was concerned in the publication jointly with the defendant has already been proceeded against or convicted is no answer to the charge.

DEFAMATORY LIBELS.

This class includes all libels for which an action will lie. It includes, however, some others; for whilst, as we have just seen, the proof of personal responsibility to the criminal law is required to be more strict than in civil law, the conditions enumerated in previous chapters which must be strictly satisfied before a cause of action arises, are relaxed in criminal law, on the following points:—

With regard to publication.

As to proof that the defamatory statement applied to the plaintiff or prosecutor.

As to justification of the libel.

PUBLICATION.—As to publication, the rule in the criminal law is that, to constitute publication, it is not absolutely necessary that the libellous matter should be communicated to a third person—communication to the plaintiff or prosecutor himself being sufficient. As,

however, publication to third parties may be taken for granted in the case of a newspaper, this point need not be further dwelt upon here.

DEFAMATION.—As to the necessity of showing that the defamatory words apply with certainty to the plaintiff or prosecutor, the criminal law in certain cases dispenses with this. Thus it would seem that if an attack be made upon the memory of a dead ancestor, an indictment will lie on proof that the intent or natural effect of the attack is to injure one or all of the descendants in so grievous a way as to be likely to provoke them to a breach of the peace. And in the same way an attack on a class or sect of people generally, of such a character as to bring them into popular odium, and so lead to their being mobbed, will be indictable, though no particular member of the sect or class be mentioned or indicated.

4 T. R.
126.
(1791.)

In the old case of *R. v. Topham*, the prisoner was charged with publishing a libel reflecting on the memory of the late Earl Cowper. The jury convicted. On appeal, the judgment was arrested on the ground that the indictment did not allege that the libel tended to excite the late Earl Cowper's relations to revenge and a breach of the peace, Kenyon, C.J., holding, however, that if the indictment had contained such an allegation, then if the jury considered it proved they could have convicted (see also *R. v. Critchley*).

4 T. R.
129, n.
(1734.)
12 Q. B. D.
320.
(1894.)

In the modern case of *Reg. pros. Vallombrosa v. Labouchere*, however, doubts were expressed whether under any circumstances publishing a libel concerning a dead man was a criminal offence.

PRIVILEGE AND JUSTIFICATION.—With regard to legal excuse—that is, privilege—the rules of criminal law are precisely the same as those of civil law. Privilege, absolute or partial, will arise under the same circumstances

as at civil law, and when it does arise it will constitute the same protection. Proof of malice will, in the same way, abolish partial privilege. It may be added that, just as in civil cases, so in criminal cases, it is not necessary, except where the matter is privileged, to prove actual malice, while it is permissible for the defence in every case to give evidence of absence of malice with a view of mitigating punishment.

With regard, however, to justification, there is a great difference between civil and criminal law. At one time the rule in criminal law was, "the greater the truth, the greater the libel." That rule was abolished by Lord Campbell's Libel Act. In criminal proceedings for libel justification can now be pleaded, but in order to support it it is necessary to prove, not merely that the statements contained in the libel are true, but that it was for the public benefit that they should be published. The words of the enactment are as follows :—

On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published. To entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation; and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof. If after such

6 & 7 Vict.
c. 96, s. 6.

plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or disprove the same: Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that, in addition to such plea, it shall be competent to the defendant to plead a plea of not guilty: Provided also, that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty which it is now competent to the defendant to make under such plea to any action or indictment or information for defamatory words or libel.

51 & 52
Vict. c. 56.

By section 4 of the Newspaper Libel and Registration Act, 1881, where the person charged is the proprietor, publisher, or editor, or any person responsible for the publication of the newspaper in which the alleged libel appeared, evidence of the truth of the libel, and that its publication was for the public benefit, may be given before trial, namely, when the case is before the magistrate or court of summary jurisdiction, and the Court or magistrate, if of opinion, after hearing such evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case. *See further, infra, p. 190.*

DISORDERLY LIBELS.

The libels which we have classed under this head differ altogether from those hitherto dealt with. They are not, indeed, in the popular sense libels at all—that is, they are not defamatory. They are simply writings which the State for public purposes, and chiefly because

it thinks them likely to provoke disorder or to outrage public feeling, has resolved to interdict.

All disorderly libels have certain points in common which may be referred to shortly before considering the various classes separately. In the first place, as has been already said, they are all crimes and nothing but crimes: no civil proceedings can be taken upon them for the simple reason that not being attacks on private individuals no private wrong is done. They are injuries to the State, and their authors are responsible to the State alone. In the second place, there are no privileged occasions with regard to them, at least as far as newspapers are concerned. The report of a judicial proceeding which contains a blasphemous or indecent libel cannot be defended on the ground that such reports are privileged. Finally, in their case truth is no defence, or in other words, they cannot be justified. Formerly, as we have seen, this was also the law in the case of all criminal proceedings for libel, but the protection afforded by Lord Campbell's Act is expressly limited to "defamatory libels" (*Ex parte O'Brien*).

12 Ir. L. R.
29; 15
C. C. C. 180
(1883.)

CLASSES OF DISORDERLY LIBELS.—Disorderly libels may be divided into blasphemous, obscene, and seditious libels, to which may be added contempts—a species of libel usually disposed of summarily by the Court which has been insulted.

BLASPHEMOUS LIBEL.—Whatever may have been the law at one time, it is abundantly clear from recent decisions that in the future no publication will be held to be a blasphemous libel merely because it impugns the fundamental doctrines of Christianity. In order that

any matter may be a blasphemous libel it must be proved not to be an honest and decent attempt to discuss a sacred subject, but to be written or published with the malicious intent of insulting and outraging the feelings of Christians or of misleading the minds of the uneducated. The best evidence of such an intention will be the circumstances under which the matter was published, and the nature of the matter itself.

15 C. C. C.
231.
(1883.)

This is the law as laid down in *R. v. Ramsay and Foote*. A revised report of Lord Coleridge's luminous summing up in that case is given in the Appendix to Mr. Blake Odgers's work on Libel and Slander, and it deserves the most careful perusal. One sentence in it gives his lordship's view of the law of blasphemous libel in a nutshell: "If the deficiencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel." The old *dicta* which declared the Christian religion to be part of the Common Law of England and any questioning of its truth legal blasphemy, if they ever were correct, are no longer applicable to present circumstances, or, if applicable, will certainly never be applied.

L. R. 3
Q. B. 371
(1868.)

OBSCENE LIBEL.—Any matter the tendency of which is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands the matter is likely to fall (per Cockburn, L.C.J. *R. v. Hicklin*), is an obscene libel. It is to be observed that two conditions are here mentioned. The first is that the matter must have a tendency to corrupt certain minds. The second is that it must be so published as to be likely to fall into the hands of those subject to its vicious influence.

This latter condition is of the utmost importance, as but for it books such as many medical treatises and classical works would come under the ban of the law.

These, however, are fully protected if published in such a way as not needlessly to attract the attention of those likely to be injured by them. A publication may be innocent enough under one set of circumstances, which, under another, will be held obscene. For instance, an article proper enough in a medical paper may be held an obscene libel when published in an ordinary journal. In the same way a scientific pamphlet, proper enough when advertised only in scientific papers and sold at the ordinary price, may become an obscene libel if widely advertised and sold at a cheap price.

In *R. v. Hicklin* the facts were as follows: Henry Scott was the publisher of a book called *The Confessional Unmasked*. This purported to be extracts from Roman Catholic theological writings in Latin, and accompanied by a free English translation. Part of the matter was grossly obscene. By order of the defendants (who were justices) the police seized the work for the purpose of destroying all copies of the book. Scott appealed. At trial at quarter sessions it was found that Scott did not sell the pamphlet with the object of depraving the public morals, but for the purpose of exposing the errors of the Church of Rome. The recorder holding that under these circumstances the publication was not an obscene libel, the magistrates appealed. The Court of Queen's Bench held that whatever the motives of the publisher, the publication was obscene, and the order of the justices was right.

L. R. 3
Q. B. 360.
(1868.)

Steele v. Brannan was an appeal against a similar order for destruction. Here the publication consisted of a report of the trial of the publisher of the obscene pamphlet condemned in the above case, and in the report not merely appeared the portions of that work read in Court, but other portions not publicly read. The defence was, (1) absence of criminal intent, (2) privilege. But it was held that the privilege of publishing reports of judicial proceedings did not protect the publication of obscene matter, whether it was read publicly in the course of such proceedings or not; and that

L. R. 7
Q. P. 261.
(1872.)

the intent of the publisher was of no importance provided that the natural effect of the publication was to deprave morals.

SEDITIONOUS LIBEL.—Seditious libel is a very vague offence, stretching from high treason on the one hand to contempt of Court on the other. It is defined as the publication in some permanent form of seditious matter. And seditious matter is defined as matter “tending to bring into hatred or contempt the person of his Majesty, his heirs, or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or to excite his Majesty’s subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means” (60 Geo. 3, and 1 Geo. 4, c. 8, s. 1), or “to raise discontent or disaffection amongst her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects” (Stephen’s Dig. of Crim. Law, 4th ed. art. 93).

Publications coming within this definition may sometimes amount to high treason or treason felony. For instance, a newspaper article inciting the public to murder or wound the Queen would be high treason (see 36 Geo. 3, c. 7; 57 Geo. 3, c. 6; 11 & 12 Vict. c. 12, s. 1). And an article inciting a foreign nation to invade the kingdom in order to overturn the government by law established may be held treason felony (see 11 & 12 Vict. c. 12, s. 3). As regards an attack upon either House of Parliament, or on one of the Courts, it is generally punished, not as a seditious libel, but as a contempt.

Prosecutions for seditious libel are now very rare. When they are undertaken it is usually because of the

disturbed state of the district in which they are published, and the jury are entitled to take this circumstance into consideration in deciding whether the writing is libellous or not (*R. v. Sullivan*). Speaking generally, it would be difficult or impossible now to obtain a conviction except it is made clear to the jury that the matter charged is calculated to lead to public disorder.

11 Cox,
C. C.
p. 50-54.
(1868.)

In *R. v. Sullivan* the defendant was the editor and proprietor of the *Weekly News*—a Dublin Nationalist newspaper. He was indicted for seditious libel on account of certain comments made in the paper on the execution of three men for the murder of Sergeant Brett in Manchester. Among the matters charged as seditious were certain cartoons. One of these was called "England and Austria: A Striking Contrast," and represented Austria setting Hungary free, while England holds Ireland bound, and tramples on her. This was said to represent the suspension of the Habeas Corpus Act in Ireland. The other cartoon was entitled: "It is Done!" and represented a female figure with a drawn dagger which dripped with blood, trampling on a balance and scales. The prosecution contended that the woman was meant to represent the English Government, and the balance and scales justice. The defence said the woman was really intended to represent that part of the British public who assembled outside the prison at the time of the execution. The rest of the alleged seditious matter consisted of articles some of which referred to freeing Irish soil from the curse of British misrule by force of arms. Fitzgerald, J., in his summing up, pointed out that the question was not what was meant by the cartoons and articles, but what persons who saw them thought they meant. He also said that though the judge should point out what sedition was, the jury were not bound by his ruling, but should exercise their own judgment in deciding whether the matter alleged to be seditious was calculated to promote disorder, and in deciding this they might take into consideration the condition of affairs in the country. Verdict, guilty.

11 C. C. C.
50.
(1868.)

In order that anything may be seditious, it must be contrary to the allegiance due to the sovereign. Accordingly an article in an English newspaper inciting the subjects of a foreign sovereign to rebellion or outrage cannot be held a seditious libel. It may, however, amount to an incitement to murder within 24 & 25 Vict. c. 100, s. 4 (see *Reg. v. Most*).

7 Q. B. D.
244.

(1881.)

CONTEMPTS.—The publication of any matter defamatory of either House of Parliament, or reflecting on any member of such House in his character of member, is a contempt of that House, and may be punished by committal. Formerly, this privilege was carried very far, but the tendency of late has been more and more to disregard such contempts, except in very flagrant cases, leaving the conduct of the House to the care of the constituencies and the characters of the members to be vindicated in the ordinary Courts.

It is a contempt to publish concerning Superior Courts of Record any matter reflecting upon the Court itself or abusing the parties who are concerned in causes therein or tending to prejudice the public against persons before the cause is heard (*Roach v. Garvan, Re Read & Hugginson*). This rule does not apply to inferior Courts, the judges and parties in which have only the ordinary remedies against libellous comments.

2 Atk. 469.

The following are Superior Courts of Record :—the House of Lords, the Judicial Committee of the Privy Council, all the Superior Courts of Common Law and Equity, and Courts of Nisi Prius and Assize. In Ireland, the Superior Courts of Common Law and Equity, and Courts of Assize and Nisi Prius; and in Scotland the Court of Session.

In the recent case of *Hunt v. Clarke, In re O'Malley*, the facts were as follows: The plaintiff Hunt had brought an action against Clarke for misrepresentation alleged to be contained in the prospectuses of certain companies promoted by Clarke—among others the Moldacot Royalties Trust, Limited. The *Star* newspaper, when this case appeared in the list for trial, made some comments upon the coming trial, ending with these words: "Mourners over the Moldacot *fiasco* are likely to hear a little inside history of the business." The defendant Clarke applied to commit O'Malley, the publisher of the *Star*, alleging that this constituted a contempt of Court. The Divisional Court refused to commit. On appeal, the Court of Appeal held that, though the comment amounted technically to a contempt, yet it was not such a contempt as the Court ought to commit for. Cotton, L.J., in delivering judgment, held that comments upon a party to an action might constitute a contempt which the Court should punish by committal, but to do so it must be such as was calculated to prejudice the judge and jury, and so prevent a fair hearing of the cause. The jurisdiction of a Court to commit was arbitrary and unlimited; and, consequently, should be jealously watched and exercised. Before committal a judge should be convinced that unless he did so the cause cannot be prosecuted to a fair hearing. The appeal was dismissed without costs.

61 L. T.
343.
58 L. J.
(Q.B.) 490.
(1889.)

In re Crown Bank the contempt of Court complained of consisted of the following observations contained in the *Star* newspaper, and dealing with the affairs of the Crown Bank, against which a petition for liquidation had been presented:—"The Crown Bank—Letting light in. We have respectfully directed attention to the so-called bank, and we have not hesitated to describe it as a fraudulent concern. Neither Mr. Gilpin, nor any other person connected with it, has thought fit to challenge that description, and we observe with much satisfaction that the matter has now come before the Court. On Saturday a petition for winding-up the bank was discussed in Mr. Justice North's Court. The petition is ordered to stand over until next Saturday, when the chairman of the bank and Mr. Gilpin are directed to attend for the purpose of being examined. If they are compelled to

44 Ch. D.
149.
(1890.)

make a full statement as to the affairs of the bank we shall have some interesting revelations." This was held to be contempt of Court, and the publisher of the *Star* was fined £50. North, J., in delivering judgment, after pointing out that the comments of the *Star* upon the Crown Bank before the petition though they might be libellous, could not be contempt of Court, went on: "When with notice that the petition had been presented, the newspaper deliberately took one side in the controversy, and took on itself to foretell what the result would be, in my opinion there was a gross contempt of Court. It was doing what might interfere with the course of justice. Whether it actually would so interfere in any case I do not know."

58 L. J.
(Ch.) 706.
61 L. T.
502.
5 T. L. R.
721.
(1889.)

In *re The American Exchange in Europe, American Exchange in Europe v. Gillig*, shews that it is a contempt of Court for a newspaper to publish an account of what passed at a private examination of a witness in bankruptcy proceedings. This was an application to commit Mr. Moignard, the publisher of the London edition of the *New York Herald*. This paper had published an article entitled "Mrs. Leslie's Woes," in which Mrs. Leslie was represented as telling a reporter what she had been asked, and what she had answered at the private examination in certain winding-up proceedings. The defendant pleaded that the matter was not a contempt, and that it was inserted without his knowledge, he being really only the foreman printer of the *New York Herald*. Stirling, J., held the publication a contempt, and also held that Mr. Moignard was liable, and though he was not committed, he was ordered to pay the costs of the application.

58 L. J.
(Ch.) 513.
60 L. T.
749.
5 T. L. R.
329.
(1889.)

In the *Metropolitan Music Hall Company v. Lake* the *Financial Times* published a private circular concerning the affairs of a company in liquidation. On application to commit the editor and printer for contempt of Court, they alleged that when they published the circular in question they were not aware that the company was in liquidation. Held, that there was no contempt, persons not being bound to be cognisant of proceedings in Courts of justice.

THREATENING TO PUBLISH.—By the 6 & 7 Vict. c. 96, s. 3, it is a misdemeanour to publish or threaten to

publish any libel upon any other person, or to threaten to publish, or propose to abstain from publishing, or to offer to prevent the publishing of any matter or thing touching another, with intent to extort money or gain, or to procure for any one any appointment or office of profit.

In *R. v. Coghlan*, the prisoner was indicted for threatening to publish "certain matter with intent to extort money from one W. Gee." The "certain matter" consisted of a placard announcing that, if not previously disposed of by private contract, a debt due by the said W. Gee would be disposed of by public auction. It appeared that the alleged debt arose out of some business transactions, and that the prisoner had not demanded money but an account. The judge ruled that whether this placard was libellous or not, if the threat to publish it was made with the intent to extort money, then the prisoner was guilty of a misdemeanour under the second part of the above enactment. If, however, the threat was used with the intent to obtain a statement of accounts from the prosecutor, that did not amount to an intent to extort money. Verdict, not guilty.

4 F. & F.
316.
(1865.)

By 24 & 25 Vict. c. 96, ss. 46, 47, it is a felony to accuse or threaten to accuse another of any infamous crime whether by letter or otherwise, with intent to extort money or gain (*R. v. Ward*).

10 C. C. C.
42.
(1864.)

ILLEGAL PRACTICES AT ELECTIONS.

A new offence which may affect newspapers has been created by the Corrupt and Illegal Practices Prevention Act, 1883. This, though neither a libel nor a contempt, may be conveniently referred to here. Sect. 9, sub-sect. 2, which creates the offence, runs as follows:—

46 & 47
Vict. c. 51.

Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such an election for the purpose of promoting or procuring

the election of another candidate shall be guilty of an illegal practice.

47 & 48
Vict. c. 70. This enactment which refers to parliamentary elections was extended by sect. 6, sub-sect. 2 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, to elections coming within that Act, that is, besides municipal elections, to elections of members of Local Boards, Improvement Commissioners, Poor Law Guardians, and School Boards.

51 & 52
Vict. c. 41. And by sect. 75 of the Local Government Act, 1888, it is extended to elections of members of County Councils.

The penalty for a breach of this provision is laid down in sect. 10 of the Corrupt and Illegal Practices Prevention Act, which runs as follows:—

A person guilty of an illegal practice . . . shall, on summary conviction, be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act), held for or within the county or borough in which the illegal practice has been committed.

Section 7 of the Municipal Elections (Corrupt and Illegal Practices) Act, is to the same effect save that the words “county or” are omitted.

By sect. 64 of the Corrupt and Illegal Practices Prevention Act, the expression “public office” in sect. 10 is defined, and includes every office, whether under the Crown, or local, educational, municipal, or parochial.

CHAPTER V.

CRIMINAL PROCEDURE.

THERE are three methods of proceeding in cases of criminal libel: (*a*) by criminal information, (*b*) by indictment, (*c*) by summary proceedings. The first two methods may, generally speaking, be adopted in all cases of criminal libel; the last is applicable only in cases of indecent libel or contempt.

CRIMINAL INFORMATION.

Criminal informations may be laid either by the Attorney-General acting *ex officio*, or by the master of the Crown Office acting at the instance of a private prosecutor. In the former case the information issues, as of course, in the latter the consent of the Queen's Bench Division is necessary before the information can issue (4 & 5 Will. & M. c. 18; C. O. R. 46). Such consent is now seldom given unless the libel is one directly affecting the public, as, for instance, when the applicant, or "relator" as he is called, holds some public office, or when the libel is one calculated to impede the course of justice or is directed not against an individual but against a body or class.

See Lord Coleridge's judgment in *R. v. Labouchere*. The facts in this case were as follows: The applicant was the Duke of Vallombrosa. The defendant had published in *Truth* a statement to the effect that the late Duke of Vallom-

12 Q. B. D.
320.
(1884.)

brosa—father of the applicant—was “an army contractor who was nearly hanged on the charge of supplying as meat to a French army corps the flesh of soldiers who had died in hospital or who had been killed in battle.” For this an application was made for a criminal information. The application was resisted on three grounds:—(1) Because the applicant was a foreigner; (2) Because the libel was on a deceased person; (3) Because criminal informations ought only to be granted where the applicant holds some public position, and the libel refers to his behaviour in that position. The Court, while holding that informations might be granted at the suit of foreigners, considered the fact that the applicant was a foreigner to be strong reason for rejecting the application, and while declining to say that a libel on a deceased person might not make the libeller criminally liable at the suit of that deceased person’s descendant, considered that also a good ground for refusing a criminal information. On the third objection the Court decided for the defendant.

METHOD OF PROCEDURE.—The method of procedure when application is made by a private person for a criminal information, differs in several respects from that followed in ordinary criminal cases. The relator files affidavits proving publication of the libel, specifically denying its truth, and stating the circumstances surrounding it. Counsel then, on his behalf, moves the Court to grant a rule calling on the defendant to shew cause why an information should not be issued against him. On the defendant shewing cause, the Court, after hearing argument, either dismisses the rule, after which in ordinary cases no further application for an information can be made, though the prosecutor may still proceed by indictment, or makes it absolute. In the latter case the relator must enter into recognizances in £50 to prosecute effectually. An information is filed at the Crown Office (C. O. R. 46), and to this the defen-

dant must appear. After appearance, the defendant has ten days to plead or demur, after which, whether the information was laid by the Attorney-General or by the Master of the Crown Office, the trial proceeds precisely as if an indictment had been found by a grand jury, and the case had been removed to the Court of Queen's Bench by certiorari. The trial takes place before the Queen's Bench (when the information was laid by the Attorney-General he is entitled to demand, if he likes, a trial at bar, *i.e.*, before three judges), and either party can obtain a special jury (C. O. R. 158), exactly as in a civil case. If the trial results in a conviction the defendant may move for a new trial on the same grounds as in an action. If, however, this motion is refused, there is no appeal.

COSTS.—In cases of defamatory libels, proceeded against by criminal information, when the trial results in an acquittal of the prisoner, he is entitled to the costs to which the information has put him, but when it results in a conviction the relator cannot recover the costs of the prosecution or any part of them, unless the prisoner has pleaded justification, in which case, the relator is entitled to the costs to which he was put in consequence of that plea (C. O. R. 50, and 6 & 7 Vict. c. 96, s. 8).

PROCEEDINGS BY INDICTMENT.

CONSENT OF JUDGE.—Section 8 of the Law of Libel Amendment Act, 1888, contains an important alteration in the law as to criminal prosecutions for libels appearing in newspapers. That section enacts that "no criminal prosecution shall be commenced against any proprietor,

51 & 52
Vict. c. 64.

publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein, without the order of a Judge at Chambers being first had and obtained.

“Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.”

It is to be observed that the protection afforded by this clause against vexatious prosecution extends to the proprietor, publisher, editor, or “any person responsible for the publication” of the newspaper. Obviously, this does not include the writer of the libel, unless he be also editor or some “person responsible” for the publication of the paper. Under “editor” and “person responsible” might possibly be included the sub-editor, reporter, or other member of the staff, acting in the ordinary course of his duty. “Publisher,” it would seem, does not include the printer (see *R. v. Allison*).

16 C. C. C.
559.
(1889.)

INQUIRY BEFORE MAGISTRATE.—On the consent of a judge being obtained, a summons will be granted by a magistrate, and if the defendant does not appear to the summons a warrant may be obtained, or the case may be proceeded with in defendant’s absence.

The prosecutor must then prove publication, and the magistrate must decide whether the matter complained of is *primâ facie* libellous. Then in case the prisoner is “proprietor, publisher, editor, or any person responsible for the publication” of the newspaper in which the alleged libel appeared, the Court “may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice,

and as to any matter which under this or any other act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment, and the court, if of opinion, after hearing such evidence, that there is strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case" (44 & 45 Vict. c. 60, s. 4).

In *Ex parte O'Brien* it was held that this section did not enable a defendant charged with seditious libel to give evidence that such seditious libel was true. As will be observed, the only evidence admissible before the magistrate is such as "might be given by way of defence by the person charged on his trial on indictment." Accordingly, where truth is no defence, evidence of truth should not be received by the magistrate.

12 L. R. Ir.
29.
(1883.)

On hearing such evidence, the magistrate has three courses open to him. He may dismiss the case, he may convict summarily, or he may return the defendant for trial. We shall say a word or two of each of these courses.

DISMISSAL OF CASE.—By section 6 of the Newspaper and Registration Act, 1881, proceedings for libel are within the provisions of the Vexatious Indictments Act. Accordingly, if the magistrate should resolve to dismiss the charge, the prosecutor may, if he choose, have himself bound over to prosecute. In which case, the magistrate is required to transmit the recognizance and depositions to the Court in which such indictment ought to be preferred. Then if the prosecutor fail to secure a verdict against the prisoner he will have to pay all the prisoner's costs (30 & 31 Vict. c. 35, s. 2).

44 & 45
Vict. c. 60.
22 & 23
Vict. c. 17.

SUMMARY CONVICTION.—In case the person charged is “proprietor, publisher, editor, or any person responsible” for the publication of the newspaper in which the libel appeared, the magistrate may convict summarily.

44 & 45
Vict. c. 60.

Section 5 provides that if the Court of summary jurisdiction is of opinion that though the person charged is shown to be guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: “Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?” And if such person assents to the case being dealt with summarily, the Court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Since the Law of Libel Amendment Act this provision is of very little importance, and is seldom likely to come into operation. If the libel be of a trivial description, the judge at Chambers will probably refuse his consent to a criminal prosecution, and should the judge at Chambers consent, the magistrate will hardly take upon him to declare that trivial which a judge of the High Court thought sufficiently serious to justify a prosecution.

RETURNED FOR TRIAL.—If the magistrate decide to return the prisoner for trial, the prisoner is entitled to bail; if no bail be given the prisoner will be committed to prison until trial.

In every case except that of obscene libel, the prisoner must be returned for trial either to the assizes or the Central Criminal Court. The prosecutor or prisoner

may, however, apply to have the case removed by certiorari to the Queen's Bench Division. The grounds on which a certiorari is usually granted are, that a fair and impartial trial cannot be obtained in the Court below, or that difficult questions of law or fact make it desirable that the case should be heard before the High Court or tried by a special jury. When the trial is removed to the Queen's Bench, the proceedings after removal are the same as in the case of a criminal information.

PLEADING TO THE INDICTMENT.—The most important pleas are, Not Guilty and Justification; either or both of which may be pleaded. The first throws the burden of proving all the material allegations in the indictment upon the prosecutor and the prisoner may raise any defence to the libel save one—that the libel is true.

To raise that defence, the prisoner must expressly plead justification under section 6 of Lord Campbell's Act. That plea, by the words of the statute, must be pleaded "in the manner now required in pleading a justification to an action for defamation." However, there seems to be no power in the Court to order further particulars; if these be insufficient the prosecutor can only demur (*R. v. Hoggans*).

Times, 4th
Nov. 1880.

EVIDENCE.—By section 9 of Law of Libel Amendment Act,

"Every person charged with the offence of libel before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing, at every stage of such charge."

PUNISHMENT.

Usually on verdict of guilty the prisoner is allowed time to file affidavits in mitigation of punishment if he desire it. Meanwhile, he will as a rule be admitted to bail.

At common law a convicted libeller is liable to fine, or imprisonment, or both, and he may also be required to find sureties for his future good behaviour. He cannot, however, be sentenced to hard labour.

By 6 & 7 Vict. c. 96, s. 4, publication of a defamatory libel, *knowing it to be false*, makes the libeller liable to fine and imprisonment not exceeding two years. Where the charge is merely maliciously publishing, the imprisonment is not to exceed one year (sect. 5).

On conviction of blasphemous libel a prisoner may be fined and imprisoned indefinitely, and may also be required to give sureties for his good behaviour.

By 14 & 15 Vict. c. 100, s. 29, conviction of obscene libel makes the convict liable to fine and imprisonment indefinitely, with or without hard labour.

For seditious libel the punishment is fine of any amount and imprisonment for any period. Sureties for good behaviour may also be required.

By 6 & 7 Vict. c. 96, s. 3, publishing or threatening to publish a libel, &c., for purposes of extortion, renders the convict liable to imprisonment, not exceeding three years with or without hard labour.

By 24 & 25 Vict. c. 96, ss. 46 and 47, accusing or threatening to accuse another of an infamous crime for purposes of extortion is felony, punishable with penal servitude for life, or for any term not less than five

years, or with imprisonment with or without hard labour for a period not exceeding two years.

SUMMARY PROCEEDINGS.

OBSCENE LIBELS.—By 20 & 21 Vict. c. 83, large powers of seizure and destruction are given to magistrates on sworn information, shewing that printed matter of an indecent character is kept in any place for the purpose of sale or exhibition for profit. An appeal from the magistrates' decision lies to the Quarter Sessions.

By 5 Geo. 4 c. 83, s. 4, and 1 & 2 Vict. c. 83, s. 2, any person exposing or exhibiting any indecent prints or pictures in a public place or in a window or house in a public place, is to be deemed a rogue and a vagabond, and punished on summary conviction. It is obvious that under certain circumstances these enactments might apply to prints purporting to be newspapers or parts of newspapers.

Indictments for obscene libel may be returned for trial to Quarter Sessions.

CONTEMPTS.—Contempts can be punished summarily by committal to prison or by fine, or both.

In *O'Shea v. O'Shea and Parnell* the question arose whether judgments in cases of contempt of Court committed by persons not parties to an action—such as attacks in newspapers on the judge or the parties in an action—were judgments in a criminal matter or cause within sect. 47 of the Judicature Act of 1873, and from which, therefore, there is no appeal. The Court of Appeal held that they were. Lopes, L.J., in his judgment says: "There are different kinds of attachment for contempt. One kind of attachment is to enforce obedience to an order made in a civil action or proceeding, against one of the parties, in respect of something the doing

15 P. & D.
D. 59.
(1890.)

or not doing of which is not a criminal act. That could not be an order in a criminal cause or matter within sect. 47. . . . But there is another kind of attachment which is the subject of an independent application against a person who is not a party to the suit in respect of an act done outside the suit, and which act is criminal. That, I think, is within the words of sect. 47. The application on which the present order was made was an application by the petitioner in the divorce action, in reference to an attempt made by a stranger to the suit to interfere with the administration of justice in the action, but it is made outside the action. The object of the application was to obtain the punishment of the appellant, and the proceeding ended with the order against him. I am clearly of opinion that this order was made in a criminal matter."

PART III.

FOREIGN PRESS LAWS.

THE development of the Law relating to the Press has in all countries followed much the same course. At first the invention of the printing-press was generally welcomed, and German printers were encouraged to establish themselves at the various Courts and Universities throughout western Europe. In France, where intellectual activity was then at its height—in Paris and Orleans alone some ten thousand copyists were constantly employed in the multiplication of manuscripts—there was naturally eager curiosity about the new invention, and in 1470, the year before Caxton began printing under the protection of the Abbot of Westminster, Ulrich Gering set up a press in the Sorbonne, the theological faculty of the University of Paris. Three years later Louis XI. granted letters patent to this same “Uldaric Quéring” and two other Germans authorising them “de faire livres de plusieurs manières d’écritures, en moslé et autrement,” and before many years more than fifty printing presses were at work in Paris.

For a time, no doubt, the Church and the universities were able to control the new power, as they had all along regulated the issue and sale of manuscripts; but as the presses multiplied the task became impossible, especially as the unrest of the New Learning was even

then beginning to spread throughout Europe. In 1496 Pope Alexander VI. exhorted the bishops to greater vigilance in preventing the appearance of unauthorised books, and in 1501 a special Bull was issued threatening with excommunication any printer who issued a book without first "asking the advice" and obtaining the permission of the archbishop in whose province the book was to appear, or his representative. From this time forth the principle of the Censorship was definitely established. It was consolidated and extended by Leo X. in 1515, and from 1524 to 1548 a series of Imperial Diets drew up regulations of similar import and of ever-increasing stringency for the use of the civil power in Germany. In Paris the King and the Sorbonne soon repented of their over-hasty welcome, and in 1535 an edict of Francis I., absolutely prohibited the printing of books, the penalty for infractions being death. Such an order could not be enforced, and it was soon replaced by another, giving full power to the Sorbonne to decide on the fate of books, and of their authors and printers, and this practically continued in force till the Revolution. In England the Ecclesiastical Courts and the Court of Star Chamber appear both to have claimed and exercised the right of censorship, the power of the latter body being firmly established by an Order of the Court, drawn up in the reign of Elizabeth (1585). When the Court of Star Chamber was abolished by the Long Parliament in 1641, the censorship was expressly retained, and did not finally disappear from our statute book till 1695.

The abolition of the censorship by the Parliament of William III., and the consequent establishment of the English press on the firm basis of "freedom from pre-

vious restraint," supplied the advocates of similar liberty abroad, all through the eighteenth century, with an example, while in Milton's "*Areopagitica*," they had a text book. To Denmark belongs the credit of being the first Continental state to adopt the principle of liberty. It is true that the Rescript of September, 1770, did not long survive its real author, the ill-starred Struensee, whose death on the scaffold formed a gloomy close to a short and most dramatic chapter in Danish history, but still the fact deserves to be recorded—if for nothing else, because it gave occasion to Voltaire's "*Épître au Roi de Danemark*"—that Christian VII. was the first sovereign to proclaim "the unrestricted liberty of the press" throughout all his dominions. The American colonies, when they began their struggle for independence, naturally gave prominence to the claim for which, in great measure, they had crossed the Atlantic; "the liberty to know, to utter, and to argue freely according to conscience." Pennsylvania, Maryland, North Carolina, and Delaware embodied in their constitutions, adopted in 1776, the doctrine of liberty, and when the time came for drawing up the Constitution of the United States, one of its earliest provisions was (Amendment of 1789, Art. 1) that "Congress shall make no law abridging the freedom of speech or of the press."

The censorship established in France by Francis I., continued in force till the Revolution, when it disappeared with the rest. Liberty, in theory at least, took its place for a time. Article 11 of the constitution of 1791 runs thus:—"La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme. Tout citoyen peut donc parler, écrire, im-

primer librement sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi." In Spain (1812), Belgium (1831), and Greece (1844), English example and influence led to the abolition of the censorship. The revolutions of 1848 gave similar liberty to most of the German states, as well as to Holland, Italy, and Denmark, and in Austria-Hungary "authorisation" and the censorship were declared abolished by the Fundamental Law of 1867. Every European state with any pretensions to a progressive civilisation has now adopted freedom from censorship as the basis of its press legislation.

No practical object would be gained by a detailed account of all these various Laws and Codes, many of which are mere copies of the same original. It will be enough if we take the two most important and most comprehensive recent enactments on the subject, the French "*Loi de la Presse*" of 1881, and the German "*Reichspressgesetz*" of 1874, and examine them in the light of our English experience. It so happens that in each country, as soon as the last great national crisis was over, and institutions were established on a firm and regular basis, the best minds in the legislature applied themselves to the task of fixing and defining, once for all, the position, rights, and responsibilities of the periodical press. When German unity was established in 1871, it was recognised on all hands that the laws regulating the freedom of thought and speech were a matter of Imperial concern, and so should be removed from the control of the local governments. This was provided for in article 4, section 16 of the constitution of April, 1871, and the work of preparing a comprehensive Press Law was taken in hand with as little delay as possible. On February 11, 1874, the Imperial Chan-

cellor laid before the Reichstag the Bill drawn up by the Federal Council, and after long debate and many amendments it was finally passed, and came into force on the 1st of July of the same year.

In France, where, under the various régimes that had risen and fallen during the century, there had grown up a body of over forty different and sometimes contradictory laws affecting the press, the need for reform and codification was not less urgent, but the internal struggle was for a time too intense, and it was not till the steady working of the constitution of 1875 had resulted in the bringing together in both Houses of something like a homogeneous majority that the law of July, 1881, set in order the confused mass of statutes. It is well, from our point of view at least, that in each country advantage was taken of the moment of national complacency when, so far as domestic politics were concerned, all seemed plain sailing. We have thus registered, as it were, the high-water mark of liberal and constructive statesmanship in the two leading states of the Continent, for at that happy period the National Liberals in Germany and the Republicans in France, although fully determined to maintain a firm and regular government, claimed for themselves, and were prepared to grant to their opponents, a very large measure of liberty of speech. In each case freedom from previous restraint is expressly declared to be the keynote of the whole code, the *ratio legis* in the light of which it is to be interpreted. The abuse of that freedom is an offence to be punished by the law, but unless and until such an offence has been committed the writer is free, and no preliminary censorship, civil or religious, can come into operation to check or to guide him.

It is hardly necessary to say that in neither country has the settlement been accepted as final. In Germany the public prosecutor and the government officials, and in France the newspapers, appear to have strained the law, in opposite directions, to an almost unbearable degree, but all reactionary suggestions have up to the present been decisively rejected. The Socialist Laws in Germany have from time to time placed enormous power in the hands of the authorities, and in March, 1889, the Federal Council, at the instigation of the Prussian government, proposed to replace these temporary and local provisions by a permanent modification of the press law and the criminal code of the empire. Under this scheme, which amounted to a virtual re-establishment of the censorship, any person "publicly inciting class against class," or "attacking the fundamental bases of public and social order, especially the monarchy, religion, marriage, and property," could have been imprisoned, or expelled from the country. The proposal never reached the stage of public discussion in the Reichstag, and with the fall of Prince Bismarck it disappeared, for the present at least, from the sphere of practical politics. In France, when the Boulangist panic was at its height, more than one proposal to modify the law of 1881 was brought forward; the attempts in this instance taking the direction of restoring the authority of police magistrates in the case of certain press offences, and doing away with trial by jury. In the Senate M. Barthe's Bill to this effect was carried by a large majority (February, 1890), but in the Chamber of Deputies it was rejected by 347 votes to 189. The particular grievance complained of was thus put by one leading paper which strongly advocated the change:

"The verdicts of juries are so scandalously opposed to facts that only a few functionaries now prosecute for libel, and they do so merely because, afraid of losing their posts if they do not prosecute, they prefer the risk of losing their case."

By way of contrast, and to complete the picture, we may quote a description of the state of things in Germany, as given by a well-known writer.* "The ever-increasing elasticity with which a new generation of lawyers are wont to interpret certain paragraphs of the criminal code makes it a very risky undertaking to discuss public affairs anywhere but in the Reichstag. It is possible for a writer in the twinkling of an eye, without wishing it or dreaming of it, so to offend a big man, or a little man, or even sometimes a big-little man, that he has to pay for it with several months' loss of freedom, and this kind of justice has so nursed and fostered the sensitiveness of the body of officials and also of private individuals, that the discussion of grievances has become a very ticklish affair. I should not advise a journalist to write that he considered any public or private building to be painted in very bad taste. He might bring upon himself an action for giving offence from the person who had it painted, from the painter, and from the occupier of the house. Not very long ago, a court of law decided that a writer could be refused admittance to a theatre subventioned by the public money, although he had paid for his ticket, because he had criticised the actors so sharply that he had spoilt the pleasure of the public in the performance."

Both Germany and France then, it is clear, are still

* L. Bamberger, "The German Daily Press," *Nineteenth Century*, January, 1890.

face to face with the old difficulty of reconciling Liberty and Order. It is to be noted, however, that in each country it is not so much the law itself as its administration that is complained of. The great central principle of the liberty of the press,—freedom from previous restraint—stands unchallenged. But we must examine these codes separately.

PRESS LAWS IN FRANCE.

The Revolutionary constitution of 1791 conferred, as we have seen, absolute liberty on the French press. But that settlement did not last long. It would be useless to attempt to follow the succeeding enactments, which responded to each change of popular temper, and for ninety years filled the statute books with a body of legislation of bewildering complexity. There are, however, three laws which stand out as landmarks, and call for passing notice. The Law of May, 1819, was the basis of all subsequent attempts at legislation, and the greater part of it remained in vigour till the passing of the Law of 1881. It re-established, before all, the principle of the sanctity of private life, which had naturally been in abeyance during the orgie of defamation which accompanied the Revolution. To use the words of M. Royer Collard, it provided that private life should be walled in (*murée*), and with this object personal defamation was expressly excepted from “crimes and offences of the press,” which were to be tried before a jury. Nor could truth be pleaded as a justification, for the law absolutely prohibited “*les preuves des faits diffamatoires*.” It may be mentioned here, that by a short-lived law of the Second Empire, known at the time (May, 1868) as the *mur Guillaumet*, private life was still more effectually

"walled in." Article 11 of this law ran as follows:—
"Toute publication dans un écrit périodique relative à un fait de la vie privée constitue une contravention punie d'une amende de 500 francs."

Next in importance to the Law of 1819 comes the Law of 1822, introducing the remarkable principle of the "procès de tendance," which effectually placed the press at the mercy of the government of the day. It provided that, although no particular article or copy of a newspaper could be fixed upon as containing a breach of the law, the "tendency" of the paper through a series of articles might be so interpreted. In a country where the magistracy might almost be called a branch of the executive, the result of such a law may be imagined. For the first "offence" the paper might be suspended, the second was followed by suppression.

Finally, in 1850, the signature of the author to every "article of discussion" was made compulsory by the "Loi Tinguy." The wording of this law, which has had a lasting but altogether unexpected effect on French journalism, is as follows:—"Tout article de discussion politique, philosophique ou religieuse, inséré dans un journal, devra être signé par son auteur, sous peine d'une amende de 500 fr. pour la première contravention, et de 1000 fr. en cas de récidive." The result was, that when any article appeared that was likely to attract the attention of the authorities, it was signed by an *écrivain de paille*, some more or less illiterate person, who was kept about the office to face unpleasant visitors, fight duels, and go to prison, when necessary. This law, which has immortalized the name of an otherwise obscure Deputy, has long been repealed, but its effect is still visible in the prevalence of signed articles in the French

press. When no prosecution was to be feared, the article was signed by its real author, and when the necessity for concealment had disappeared the habit of signing still continued. In short, the only permanent effect of a law which was intended to hamper the expression of opinion by the press, has been the remarkable prominence acquired in French public life by individual writers whose personality in any other country would have remained unknown.

The Law of the Press of July, 1881, abolishes all preceding legislation, forming in itself an elaborate Code. It opens with a declaration of liberty of printing and publication. In a word, as M. Cazot, Minister of Justice, said in his official circular to the Procureurs-Généraux, "All preventive measures are abolished." The first four clauses deal with the regulation of printed matter "intended for publication," providing that it shall bear the name and address of the printer, and that two copies shall be forwarded to the national collections.

With clause five begin the special provisions affecting newspapers. There is no attempt at exact definition of a newspaper. The law, it is declared, applies to "tout journal ou écrit périodique." In most of the previous legislation on the subject only political journals were dealt with; the present law applies to periodical publications of all sorts. The preliminary sanction (*autorisation préalable*) and the giving of security (*dépôt de cautionnement*) are both abolished; but, before publication, the title of the paper, the name and address of the manager (*gérant*), and the "*indication*" of the printer, must be handed in in writing, stamped, at the Parquet of the Public Prosecutor, and any change in any of these conditions must be similarly notified within five days.

This is what is known in Continental law as the "personification" of the journal—the providing of a responsible person who represents and is responsible for the paper before the law. As we shall see, the German law is similar, the place of the Manager being taken by the Editor (*verantwortlicher Redacteur*). The *gérant* must be a Frenchman resident in France, of full age, and in possession of all his civil rights. His name must be printed upon every copy, and he must himself sign four copies of each issue, which are then to be deposited, two each at the Parquet and the Préfecture.

"Compulsory rectification" plays a large part in the French Press Law, and is a fruitful cause of controversy. In the first place a distinction has to be made between the cases in which the party claiming the right to reply is an official (clause 12); or a private person (clause 13). In the first case it is provided that, "The *gérant* is bound to insert gratuitously at the beginning (*en tête*) of the next number of the newspaper or periodical every correction (*rectification*) addressed to him by a depository of public authority, concerning his official acts which may have been inaccurately reported." The correction may extend to, and must not exceed, twice the length of the original article. In the second case the *gérant* is bound to insert within three days (or in the next number when the paper is not a daily) "the reply (*réponse*) of any person named or referred to in the newspaper, without prejudice to the other penalties to which the article may give rise." This insertion shall be made "in the same place and in the same type" as the original article, and shall be published without charge, provided it does not exceed twice the length of the article. In that case the excess shall be charged for at advertisement rates.

It will be seen that there is an important difference between the two cases. A public functionary can only make a correction as to matters of fact relating to his office, whilst any private person who has been named or referred to may "reply"—a very vague and indefinite phrase, which, as might have been expected, has given rise to endless litigation and many contradictory decisions. It has been held by one tribunal that the right is "general and absolute," and that the person referred to is "the sole judge of the opportuneness, the form, and the tenor of his reply." A higher Court, however, has, fortunately, given a decision which relieves the press from such an interpretation. "The reply," says this important judgment (Cassation, Ch. Crim., 17 Août, 1883), "must contain nothing contrary to the honour and the good name (*considération*) of the party to whom it is addressed. In the contrary case it may be refused, for the journalist is not bound to divide and separate the reply in order to publish only those portions which do not transgress the exercise of the right of legitimate defence." It has also been held that insertion may be refused if the reply contains "anything offensive, contrary to the law, or likely to compromise the interests of third parties." The limitation of space is, of course, most necessary. In supporting the clause in the Chamber of Deputies, M. Lockroy cited the cases of several provincial prefects, one of whom had compelled a newspaper to publish daily during an election, three or four columns of hostile criticism, while another in reply to a single phrase in a leading article had insisted on the publication of one of his speeches which filled two numbers of the journal.

Clause 14 provides for the prohibition by ministerial

decree of newspapers published abroad. The succeeding eight clauses, comprising the whole of the third chapter, relating to posters, electoral addresses and the colportage or sale of papers in the street, are of no particular interest to English readers.

The fourth chapter of the Code deals with incitements to crime contained in newspapers. It is provided generally that all those shall be regarded as accomplices in a crime or misdemeanour, who "by writings or printed matter sold or distributed . . . or exposed to the public view," shall have *directly* incited to the commission of it. In most cases the incitement must have been followed by an overt act; but the more serious crimes, such as murder, pillage, arson, and certain "crimes against the security of the State," are specially excepted. In these cases the direct incitement is in itself a misdemeanour. The other "public wrongs" (*délits contre la chose publique*) specially set out for punishment are: the attempt to corrupt soldiers and lead them astray from their duties; insult to the President of the Republic; the publication, *de mauvaise foi*, of false news which has resulted in a disturbance of the public peace; and "outrage aux bonnes mœurs." In the original draft of the law, the Republic, the Senate, and the Chamber of Deputies were protected in the same manner as the President; but the proposal was not adopted by the Chamber.

In the case of "offences against persons" a distinction is drawn between "defamation," which is defined as "the allegation or imputation of a deed (*fait*) which tends to injure the honour and consideration of the person or body to whom it is imputed," and "insult," which is an "offensive expression, a term of contempt or invective,

which does not involve the imputation of a deed." Each of these offences is punishable with imprisonment or fine, or both.

This clause is simply a repetition of that contained in the law of May 17, 1819, which has already been alluded to, and, so strong is the feeling in France on the subject of personal libels, that it was voted by the Chamber unanimously and without discussion. Containing as it does the "classical" definition of the offences in question, it has been the subject of numberless judicial decisions and fine-drawn distinctions which will be found set forth at length in the text books. The main point to notice is that in the French law malice (*l'intention de nuire*) is necessary, the intention of course being presumed from the nature of the act. In the words of a judgment of the highest Court (Cass., 18 Mars, 1881), "Il y a toujours présomption de mauvaise foi. Il y a toujours présomption de l'intention de nuire. . . . C'est au prévenu à établir qu'il a agi de bonne foi." Again, MM. Grellet-Dumazeau in their 'Traité de la Diffamation' put it thus: "Par ces mots 'intention de nuire' il ne faut pas entendre exclusivement le dessein de causer à autrui un dommage plus ou moins immédiat, soit dans sa fortune, soit dans son honneur, ou dans sa considération. . . . C'est un fait de conscience que le droit romain appelait invariablement *dolus* et que ses interprètes ont exprimé par *animus injurandi*; c'est à dire l'esprit de dénigrement, de malice, de méchanceté, le désir de satisfaire une mauvaise passion, un ressentiment."*

Specially protected from defamation by the Code are; courts of justice, the army and navy, and certain official public bodies (*les corps constitués et les administrations*

* 'Traité de la Diffamation,' vol. i. p. 148.

publiques). Officials are also individually protected if attacked in their official capacity (*à raison de leurs fonctions ou de leur qualité*). The list of those included in this category is a long one, ranging from cabinet ministers to jurors and witnesses.

Clause 34 settles the long-disputed question of the possibility of libelling the dead, which the Cour de Cassation had repeatedly decided in the affirmative, while several of the Courts of Appeal had maintained the negative. The law is now clear. The Act does not apply in cases of "defamation or insult directed against the memory of the dead, except when the authors of the defamation or insult have intended thereby to attack the honour and consideration of the living heirs."

"Votre Commission n'a pas voulu," said M. Pelletan, the Official Reporter of the Bill, in his speech in the Senate, "qu'on mît l'histoire au greffe: elle n'admet le délit de diffamation des morts qu'autant qu'elle passe par-dessus leur tombe pour aller frapper des vivants."

The truth of the "fait diffamatoire" may be established by evidence in the case of the public bodies already mentioned, or of individuals attacked in their official capacity; and also by a provision new to French law in the case of "the directors or administrators of any industrial, commercial, or financial enterprise which publicly asks for support from savings or credit (*faisant publiquement appel à l'épargne ou au crédit*)."

But truth cannot be pleaded in the case of attacks on private persons. "La vie privée est murée."

Foreign Sovereigns and Heads of State, ambassadors, and all agents of foreign Governments accredited to the Republic are specially protected from attacks in the press (§§ 36, 37).

In those cases where the attempt to prove the "faits diffamatoires" is forbidden, it is also forbidden to publish any report of the case. In all civil cases the Court may forbid the publication of the proceedings, the judgment alone being made public. In criminal cases (§ 38) it is forbidden to publish the indictment or other document connected with the case before the public hearing. Any publication of the private deliberations of the Court or the jury is forbidden. It may be noted that this forbidding of publication in cases of defamation is quite distinct from the exclusion of the public from the hearing (*le huis-clos*), which is provided for in Article 87 of the Code of Civil Procedure. It is there enacted that in civil actions the Court may order the *huis-clos* "if the public discussion of the case would involve scandal or other grave inconvenience." And by Article 81 of the Constitution of 1848 the public may be excluded "in every case where publicity would constitute a danger for order and morality."

A *bonâ fide* report of the proceedings of the Senate or Chamber of Deputies or a "faithful and *bonâ fide* report" (*compte-rendu fidèle fait de bonne foi*) of a public trial is absolutely privileged, provided always in the latter case that the report has not been forbidden by the Court or by the above-mentioned provisions of the present law.

The public announcement of subscriptions to indemnify those condemned to penalties "en matière criminelle et correctionnelle" is forbidden. The collection of subscriptions is not, of course, in itself illegal.

With regard to the persons to be held responsible for offences committed by the press, it is provided (§ 42) that (1) the manager (*gérant*) or editor, (2) the author, (3) the printer, and (4) the vendor or distributor of the

offending print may be proceeded against as principals. This responsibility is, however, "successive and exclusive;" that is to say, they can in general only be prosecuted "in default one of the other, in the order given, and successively." The author may, however (§ 43), be proceeded against along with the responsible manager or editor as an accessory. The vendors or distributors of the papers may also be regarded as accomplices, provided it be established that they have acted consciously (*agisciement*) and "en connaissance de cause." In case a third party to whom damages have been awarded (§ 44) shall be unable to obtain his money from any of the parties already mentioned, he may recover it from the proprietor, if he can find him.

The remaining clauses are devoted to procedure, and so do not come strictly within our present purpose. One or two points are of interest. Actions must be brought within three months of the publication. The general principle is laid down that all offences dealt with in the Code shall be referred to the Assize Court; that is to say, they shall be tried by a jury. This is followed, however, by a long list of exceptions which are to go before the ordinary criminal courts or the police courts (*tribunaux de police correctionnelle, tribunaux de simple police*).

THE GERMAN PRESS LAW.

The German law of 1874 is much shorter than the French law of 1881, and, as might be expected, does not contain so many points of interest to English readers. The first six clauses are introductory, and deal with printed matter of all sorts. This term (*Druckschriften*) is defined as including "all reproductions, by mechanical or chemical means, of writings, or of pictorial represen-

tations with or without writing, or of music with words, intended for circulation."

Circulation (*Verbreitung*) includes, besides publication, in the ordinary sense, of printed matter, its "posting up or exposure in places where it may be taken cognizance of by the public." The exact legal meaning of this word (*Verbreitung*) is not altogether clear. In the Prussian press law of 1851 *Veröffentlichung* (publication) was used, and the law-writers are not agreed as to the precise significance of the change. It would appear that both the *body* and the *contents* of the document, book, or newspaper must be communicated, and that neither oral communication on the one hand, nor circulation in the ordinary course of a publisher's business and without knowledge of the contents, on the other, is punishable under this law.

With the 7th clause we come to the special regulations applying to newspapers. "Periodical printed matter within the meaning of the law" is declared to include "Zeitungen und Zeitschriften welche in monatlichen oder kürzeren, wenn auch unregelmässigen Fristen erscheinen." There is no formal registration of the paper as in France, but in addition to the name of the printer and publisher, there must on each number be given the name and address of the responsible editor (*verantwortlicher Redacteur*), who must be a person in possession of his full civil rights and domiciled in the German Empire. His position and duties are fully dealt with in a later section of the Act. The next provision that calls for notice has been borrowed, like that relating to the responsible editor, with certain modifications, from the French law, for in Germany also the editor finds himself face to face with the duty of compulsory rectification (*Berichtigungszwang*).

Clause 11 enacts that the editor of a newspaper shall be bound, "on the request of any public body or private person concerned," to publish, "without additions or omissions," a rectification of any statement of fact in his newspaper; provided the correction be signed, contains nothing contrary to the law, and confines itself to matters of fact. It must be published in the next number of the newspaper in the same position and the same size of type as the offending statement and it must be published free of cost so far as it does not exceed in length the original statement. Anything over that length may be charged for as an advertisement. If a paper published abroad should be condemned twice within the same year by the German Courts, its further circulation in Germany may be forbidden (§ 14) for not more than two years. In time of "war-danger," or of actual war, all publication of movements of troops or of measures of defence may be summarily forbidden by public proclamation (§ 15). The publication of a request for subscriptions to meet the payment of a fine inflicted for a press offence or of the costs of the defence, and the public acknowledgment of such contributions, are alike forbidden (§ 16). The publication before it has been produced in open court of the indictment or other official document relating to a prosecution (§ 17) is also forbidden.

Passing from the newspaper which commits the offence to the person who is to be held responsible for it before the law, the Act lays down the general principle (§ 20) that the "responsible editor" shall be regarded as the author of the offence, "unless his culpability (*Thäterschaft*) is excluded by special circumstances." Here, as in the French law, the question turns on the presence or absence of *dolus* on the part of the editor, and *dolus* in

German law is defined as "a knowledge of the guilty character" of the article in question. It is for the editor to shew in any exceptional case that he was not responsible. By putting his name at the head of it he becomes, as it were, the author of the whole paper, and although the actual writer—if he can be discovered—is, of course, punishable, the primary, and for legal purposes sufficient, responsibility falls upon the editor, who cannot even be called upon to give the writer's name or otherwise give evidence against him.

The editor, then, is always to be proceeded against as the principal, all the others responsible for the publication being regarded as accessories; and these are dealt with (§ 21) on the principle of "successive and exclusive responsibility," which we have already seen at work in the French law. But the order of succession laid down in the German law differs somewhat from the French.

First, the editor, if he has succeeded in establishing the "special circumstances" which free him from *dolus* under the previous article, and then the publisher, the printer, and the distributor of the publication, may each in succession be prosecuted for negligence (*Fahrlässigkeit*), and punished by fine and imprisonment. The responsibility is also "exclusive," that is to say, if any one of the series when proceeded against can point to a "*Vormann*," that is, one who comes before him in order of responsibility, the prosecution falls to the ground. In all cases (§ 22) a prosecution to be successful must be initiated within six months of publication—a slight improvement on the French law, which only gives the prosecutor three months in which to make up his mind.

In certain flagrant cases of breach either of the Press Law or of the ordinary Criminal Law, and when there is "urgent danger" of the incitement being immediately followed by a crime or misdemeanour (§ 23) a "provisional seizure" of the offending matter is permitted. The decision as to whether such seizure was justified or not lies with the appropriate Court (*das zuständige Gericht*), before whom the case must (§ 24), without delay, be brought by the authorities,—within twelve hours when the seizure has been effected by Police order, or within twenty-four hours when it has taken place by order of the Public Prosecutor (*Staatsanwalt*). If the Court declares the seizure to be unjustified, or if the authorities do not apply for this judicial sanction within the proper time, the seizure is void, and the papers must be restored. Although in Germany this power of provisional seizure does not appear to be harshly or arbitrarily exercised, it is easy to see that, in the case of a daily newspaper at least, repeated stoppages of circulation might be enforced so as to virtually suppress the paper altogether, especially as there is no provision for the recovery of damages against the official who oversteps his duties.

A somewhat similar provision in the Austrian law of December, 1862, has in fact been employed in such a manner as to constitute a political censorship of the most irresponsible kind. Section 7, clause 16, of this law provides for what is known as the "*objektive Verfahren*," that is, for proceedings against the *object* (the offending paper or book), instead of the editor or printer. This section for some time remained almost a dead letter, but in 1868 the so-called "Bürgerministerium," finding it impossible to get verdicts from juries in Press cases,

especially in Bohemia, hit upon the expedient which has been very actively employed ever since.

The clause provides that the Public Prosecutor may, without proceeding against any *person*, make application to a magistrate, sitting in private, for a declaration that a certain book or newspaper contains matter contrary to the law, and that its circulation be forbidden. Armed with this authority, copies of the paper may be seized wherever found, and its circulation rendered impossible. This power closely resembles that formerly claimed by the Secretary of State in England to issue a general warrant authorizing his agents in the case of publications alleged to be seditious, to search for and seize all copies of the libel. Such a procedure was declared illegal in *Entick v. Carrington* (State Trials, XIX., 1030).

The *objektive Verfahren* has been found so convenient and effective that this section has in practice superseded all the other sections of the law, and the Press in Austria is absolutely at the mercy of the Government of the day. The Austrian Press Law is, in fact, a "one clause" law. The sale of newspapers is also laid under such restrictions that, with the exception of Russia, there is no European country in which the expression of public opinion is more hampered. And this in spite of the Fundamental Law of December, 1867, to which we have already referred, and which is supposed to guarantee the Liberty of the Press. There is also an inland revenue tax of two kreuzers on every copy of every newspaper circulating in the empire. This tax, as has already been pointed out (p. 14), is independent of postage, and is levied on newspapers entering the country from abroad.

It is only right to add that in the sister kingdom of

Hungary the Law is much more liberal than in the Austrian Empire, *objektive Verfahren*, confiscation, restrictions on public sale, and compulsory rectification being unknown. In fact, the position of the Press in Hungary approaches much more closely to that of England than in any other Continental country.

Six clauses of the German Code (§§ 23-28) are occupied with the explanation of the limitations and the consequences of this provisional seizure, and the rest of the Act is devoted to details, chiefly of a local character. In time of "War-danger," "State of War," and "State of Siege" (§ 30), the Emperor is endowed by the Constitution of 1871 with very extended powers for suspending by proclamation the action of certain laws, and to this the Law of the Press forms no exception. Inter arma silent leges. The same maxim will explain the provision in the final clause (§ 31) that Alsace-Lorraine remains subject to special laws, and does not share the privileges and exemptions of this Code.



APPENDIX.

STATUTES.

	PAGE
ACCIDENT INSURANCE COUPONS.	
52 & 53 Vict. c. 42, s. 20	222
BETTING (ADVERTISEMENTS OF).	
16 & 17 Vict. c. 119, s. 7	224
37 Vict. c. 15, ss. 1, 3	225
COPYRIGHT.	
5 & 6 Will. 4, c. 65	225
5 & 6 Vict. c. 45	227
CORRUPT PRACTICES AT ELECTIONS.	
46 & 47 Vict. c. 51, s. 9, sub-s. 2, and ss. 10, 64	242
45 & 46 Vict. c. 50, s. 7	243
47 & 48 Vict. c. 70, s. 6, sub-s. 2, s. 7, s. 35, sub-s. 1, s. 36, sub-s. 1, and First Schedule	243
51 & 52 Vict. c. 41, s. 75	244
INDECENT PRINTS.	
5 Geo. 4, c. 83, s. 4	244
1 & 2 Vict. c. 38, s. 2	244
20 & 21 Vict. c. 83	245
LIBEL, REGISTRATION AND IMPRINT.	
32 Geo. 3, c. 60 (Fox's Act)	248
60 Geo. 3, c. 8, ss. 1, 2 (Blasphemy and Seditious)	249
3 & 4 Vict. c. 9 (Parliamentary Papers)	250
6 & 7 Vict. c. 96 (Lord Campbell's Act)	252
8 & 9 Vict. c. 75 (Lord Campbell's Act, Amendment)	255
32 & 33 Vict. c. 24 (Repealing Act)	257
44 & 45 Vict. c. 60 (Libel and Registration Act)	263
51 & 52 Vict. c. 64 (Law of Libel Amendment Act)	269
LOTTERIES (ADVERTISEMENTS OF).	
4 Geo. 4, c. 60, s. 41	271
6 & 7 Will. 4, c. 66	272
8 & 9 Vict. c. 74, ss. 3 and 4	272

	PAGE
POST OFFICE.	
7 Will. 4, and 1 Vict. c. 36, s. 5	273
3 & 4 Vict. c. 96, s. 43	274
31 & 32 Vict. c. 110, ss. 16, 23	274
33 & 34 Vict. c. 79	275
38 Vict. c. 22, ss. 1 and 5	282
44 & 45 Vict. c. 19	283
STOLEN GOODS (ADVERTISEMENTS FOR).	
24 & 25 Vict. c. 96, s. 102	284
33 & 34 Vict. c. 65, ss. 2, 3	284

ACCIDENT INSURANCE.

52 & 53 VICT. c. 42, s. 20.

[1889.]

20. Whereas a practice has arisen of inserting in newspapers and other publications notices or advertisements which purport to insure the payment of money upon the death of the holder or bearer of the newspaper or publication containing the notice or advertisement only from accident or violence, or otherwise than from a natural cause, and doubts have arisen as to the liability of such notices or advertisements to the stamp duty of one penny imposed by the Stamp Act, 1870, upon a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, and it is expedient to remove such doubts and to make such provisions in relation to composition for the stamp duty as are in this section contained: Be it therefore enacted as follows:—

- (a) The expression “policy of insurance against accident” as used in this section means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and the term “policy” as defined in section one hundred and seventeen of the Stamp Act, 1870, shall be construed, in relation to a policy of insurance against accident, as including any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death or of injury to the holder or bearer of the newspaper or publication containing the notice only

from accident or violence or otherwise than from a natural cause :

- (b) Where any person or body, corporate or unincorporate, issuing policies of insurance against accident, shall, in the opinion of the Commissioners of Inland Revenue, so carry on the business of such insurance as to render it impracticable or inexpedient to require that the stamp duty of one penny as imposed by the Stamp Act, 1870, be charged and paid upon the policies, it shall be lawful for the said Commissioners to enter into an agreement with that person or body for the delivery to them of quarterly accounts of all sums received in respect of premiums on policies of insurance against accident, and the agreement shall be in such form and contain such terms and conditions as the said Commissioners may think proper :
- (c) After an agreement has been entered into between the said Commissioners and any person or body under the foregoing provision and during the period for which the agreement is in force, no policy of insurance against accident issued by that person or body shall be chargeable with any stamp duty, but in lieu of and by way of composition for such stamp duty there shall be charged on the aggregate amount of all sums received in respect of premiums on policies of insurance against accident a duty at the rate of five pounds per centum, which duty shall be a stamp duty and shall be under the care and management of the said Commissioners, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are now vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for such purposes :
- (d) The quarterly accounts to be delivered by or on behalf of any person or body to the said Commissioners shall be delivered within twenty days after the fifth day of April, the fifth day of July, the tenth day of October, and the fifth day of January in every year, and every account shall be a full and true account of all unstamped policies of insurance against accident issued by that person or body during the quarter of a year ending on any of the said days next preceding the delivery thereof, and of all sums of money received for or in respect of such policies so issued during that quarter, and of all sums of money received and not

already accounted for in respect of any other unstamped policies of insurance against accident issued at any time before the commencement of that quarter :

- (e) The duty imposed by this section shall be paid on the delivery of the account, and unless then paid shall be a debt due to Her Majesty from the person or body by or on whose behalf the account is delivered :
- (f) In the case of wilful neglect to deliver such an account as is hereby required or to pay the duty in conformity with this section, the person or body shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

BETTING, ADVERTISEMENTS OF.

16 & 17 VICT. c. 119, s. 7.

[1853.]

Penalty on person exhibiting placards or advertising betting houses.

Any person exhibiting or publishing or causing to be exhibited or published, any placard, handbill, card, writing, sign, or advertisement, whereby it shall be made to appear that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers, in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making bets or wagers, in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or person using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers, in manner aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay a sum not exceeding thirty pounds, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable, and on non-payment of such penalty and costs, or in the first instance, if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding two calendar months.

37 VICT. c. 15, ss. 1 and 3.

[1874.]

1. This Act shall be construed as one with the Act of the Session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses" (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Betting Acts, 1853 and 1874, and each of them may be cited separately as the Betting Act of the year in which it was passed.

Act to be
construed
with
16 & 17
Vict. c. 119.

3. Where any letter, circular, telegram, placard, handbill, or advertisement is sent, exhibited, or published—

Short title.

(1.) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act; or,

Penalty on
persons
advertising
as to
betting.

(2.) With intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the principal Act; or,

(3.) Inviting any person to make or take any share in or in connection with any such bet or wager;

Every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act with respect to offences under that section.

COPYRIGHT.

5 & 6 WILL. 4, c. 65.

An Act for preventing the Publication of Lectures without Consent.
[9th September, 1835.]

WHEREAS Printers, Publishers, and other Persons have frequently taken the Liberty of printing and publishing Lectures delivered upon divers Subjects, without the Consent

Authors of Lectures, or their Assigns, to have the sole Right of publishing them. Penalty on other Persons publishing. &c., Lectures without Leave.

of the Authors of such Lectures, or the Persons delivering the same in public, to the great Detriment of such Authors and Lecturers: Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of *September*, One thousand eight hundred and thirty-five the Author of any Lecture or Lectures, or the Person to whom he hath sold or otherwise conveyed the Copy thereof, in order to deliver the same in any School, Seminary, Institution, or other Place, or for any other Purpose, shall have the sole Right and Liberty of printing and publishing such Lecture or Lectures; and that if any person shall, by taking down the same in Short Hand or otherwise in Writing, or in any other Way, obtain or make a Copy of such Lecture or Lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without Leave of the Author thereof, or of the Person to whom the Author thereof hath sold or otherwise conveyed the same, and every Person who, knowing the same to have been printed or copied and published without such Consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such Lecture or Lectures, shall forfeit such printed or otherwise copied Lecture or Lectures, or Parts thereof, together with one Penny for every Sheet thereof which shall be found in his Custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true Intent and Meaning of this Act, the one Moiety thereof to His Majesty, His Heirs or Successors, and the other Moiety thereof to any Person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoign, Privilege, or Protection, or more than One Imparlance, shall be allowed.

Newspapers publishing Lectures without Leave.

II. And be it further enacted, That any Printer, or Publisher of any Newspaper who shall, without such Leave as aforesaid, print and publish in such Newspaper any Lecture or Lectures, shall be deemed and taken to be a Person printing and publishing without Leave within the Provisions of this Act, and liable to the aforesaid Forfeitures and Penalties in respect of such printing and publishing.

Persons having Leave to attend Lectures.

III. And be it further enacted, That no Person allowed for certain Fee and Reward, or otherwise, to attend and be present at any Lecture delivered in any Place, shall be

deemed and taken to be licensed or to have Leave to print, copy, and publish such Lectures only because of having Leave to attend such Lecture or Lectures.

IV. Provided always, That nothing in this Act shall extend to prohibit any Person from printing, copying, and publishing any Lecture of Lectures which have or shall have been printed and published with Leave of the Authors thereof or their Assignees, and whereof the Time hath or shall have expired within which the sole Right to print and publish the same is given by an Act passed in the Eighth Year of the Reign of Queen Anne, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, and by another Act passed in the Fifty-fourth Year of the Reign of King George the Third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns*, or to any Lectures which have been printed or published before the passing of this Act.

Act not to prohibit the publishing of Lectures after Expiration of the Copyright. 8 Ann. c. 19. 54 Geo. 3, c. 156.

V. Provided further, That nothing in this Act shall extend to any Lecture or Lectures, or the printing, copying, or publishing any Lecture or Lectures, or Parts thereof, of the delivering of which Notice in Writing shall not have been given to Two Justices living within Five Miles from the Place where such Lecture or Lectures shall be delivered Two Days at the least before delivering the same, or to any Lecture or Lectures delivered in any University or public School or College, or on any public Foundation, or by any Individual in virtue of or according to any Gift, Endowment, or Foundation: and that the Law relating thereto shall remain the same as if this Act had not been passed.

Act not to extend to Lectures delivered in unlicensed Places, &c.

5 & 6 VICT. c. 45.

An Act to amend the Law of Copyright.

[1st July, 1842.]

WHEREAS it is expedient to amend the Law relating to Copyright, and to afford greater Encouragement to the Production of literary Works of lasting Benefit to the World: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by

Repeal of
former
Acts ;

8 Anne,
c. 19.

41 G. 3,
c. 107.

54 G. 3,
c. 156.

Interpreta-
tion of Act.

the Authority of the same, That from the passing of this Act an Act passed in the Eighth Year of the Reign of Her Majesty Queen Anne, intituled *An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned* ; and also an Act passed in the Forty-first Year of the Reign of His Majesty King George the Third, intituled *An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned* ; and also an Act passed in the Fifty-fourth Year of the Reign of His Majesty King George the Third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books or their Assigns*, be and the same are hereby repealed, except so far as the Continuance of either of them may be necessary for carrying on or giving effect to any Proceedings at Law or in Equity pending at the Time of passing this Act, or for enforcing any Cause of Action, or Suit, or any Right or Contract, then subsisting.

II. And be it enacted, That in the Construction of this Act the Word "Book" shall be construed to mean and include every Volume, Part or Division of a Volume, Pamphlet, Sheet of Letter-press, Sheet of Music, Map, Chart, or Plan separately published ; that the Words "Dramatic Piece" shall be construed to mean and include every Tragedy, Comedy, Play, Opera, Farce, or other scenic, musical, or dramatic Entertainment ; that the Word "Copyright" shall be construed to mean the sole and exclusive Liberty of printing or otherwise multiplying Copies of any Subject to which the said Word is herein applied ; that the Words "personal Representative" shall be construed to mean and include every Executor, Administrator, and next of Kin entitled to Administration ; that the Word "Assigns" shall be construed to mean and include every Person in whom the Interest of an Author in Copyright shall be vested, whether derived from such Author before or after the Publication of any Book, and whether acquired by Sale, Gift, Bequest, or by Operation of Law, or otherwise ; that the Words "*British Dominions*" shall be construed to mean and include all Parts of the United Kingdom of *Great Britain and Ireland*, the Islands of *Jersey and Guernsey*, all Parts of the *East and West Indies*, and all the Colonies, Settlements, and Possessions of the Crown which now are or hereafter may be acquired ; and that whenever in this Act, in describing any Person, Matter, or Thing, the Word importing the Singular Number or the

Masculine Gender only is used, the same shall be understood to include and to be applied to several Persons as well as one Person, and Females as well as Males, and several Matters or Things as well as one Matter or Thing, respectively, unless there shall be something in the Subject or Context repugnant to such Construction.

III. And be it enacted, That the Copyright in every Book which shall after the passing of this Act be published in the Lifetime of its Author shall endure for the Natural Life of such Author, and for the further Term of Seven Years, commencing at the Time of his Death, and shall be the Property of such Author and his Assigns; Provided always, that if the said Term of Seven Years shall expire before the End of Forty-two Years from the first Publication of such Book, the Copyright shall in that Case endure for such Period of Forty-two Years; and that the Copyright in every Book which shall be published after the Death of its Author shall endure for the Term of Forty-two Years from the first Publication thereof, and shall be the Property of the Proprietor of the Author's Manuscript from which such Book shall be first published, and his Assigns.

Endurance of Term of Copyright in any Book hereafter to be published in the Lifetime of the Author; if published after the Author's Death.

IV. And whereas it is just to extend the Benefits of this Act to Authors of Books published before the passing thereof, and in which Copyright still subsists; be it enacted, That the Copyright which at the Time of passing this Act shall subsist in any Book theretofore published (except as herein-after mentioned) shall be extended and endure for the full Term provided by this Act in Cases of Books thereafter published, and shall be the Property of the Person who at the Time of passing of this Act shall be the Proprietor of such Copyright: Provided always, that in all Cases in which such Copyright shall belong in whole or in part to a Publisher or other Person who shall have acquired it for other Consideration than that of natural Love and Affection, such Copyright shall not be extended by this Act, but shall endure for the Term which shall subsist therein at the Time of passing of this Act, and no longer, unless the Author of such Book, if he shall be living, or the personal Representative of such Author, if he shall be dead, and the Proprietor of such Copyright, shall, before the Expiration of such Term, consent and agree to accept the Benefits of this Act in respect of such Book, and shall cause a Minute of such Consent in the Form in that Behalf given in the Schedule to this Act annexed to be entered in the Book of Registry herein-after directed to be kept, in which Case such Copyright shall endure for the full Term by this Act provided in Cases of Books to be published after the passing of this Act, and shall be the Property

In Cases of subsisting Copyright, the Term to be extended, except when it shall belong to an Assignee for other Consideration than natural Love and Affection; in which Case it shall cease at the Expiration of the present Term, unless its Extension be agreed to between the Proprietor and the Author.

of such Person or Persons as in such Minute shall be expressed.

Judicial Committee of the Privy Council may license the Republication of Books which the Proprietor refuses to republish after Death of the Author.

Copies of Books published after the passing of this Act, and of all subsequent Editions, to be delivered within certain Times at the British Museum.

Mode of delivering at the British Museum.

V. And whereas it is expedient to provide against the Suppression of Books of Importance to the Public; be it enacted, That it shall be lawful for the Judicial Committee of Her Majesty's Privy Council, on Complaint made to them that the Proprietor of the Copyright in any Book after the Death of its Author has refused to republish or to allow the Republication of the same, and that by reason of such Refusal such Book may be withheld from the Public, to grant a Licence to such Complainant to publish such Book, in such Manner and subject to such Conditions as they may think fit, and that it shall be lawful for such Complainant to publish such Book according to such Licence.

VI. And be it enacted, That a printed Copy of the whole of every Book which shall be published after the passing of this Act, together with all Maps, Prints, or other Engravings belonging thereto, finished and coloured in the same Manner as the best Copies of the same shall be published, and also of any second or subsequent Edition which shall be so published with any Additions or Alterations, whether the same shall be in Letter Press, or in the Maps, Prints, or other Engravings belonging thereto, and whether the first Edition to such Book shall have been published before or after the passing of this Act, and also of any second or subsequent Edition of every Book of which the first or some preceding Edition shall not have been delivered for the Use of the *British Museum*, bound, sewed, or stitched together, and upon the best Paper on which the same shall be printed, shall, within One Calendar Month after the Day on which any such Book shall first be sold, published, or offered for Sale within the Bills of Mortality, or within Three Calendar Months if the same shall first be sold, published, or offered for Sale in any other Part of the United Kingdom, or within Twelve Calendar Months after the same shall first be sold, published, or offered for Sale in any other Part of the *British Dominions*, be delivered, on Behalf of the Publisher thereof, at the *British Museum*.

VII. And be it enacted, That every Copy of any Book which under the Provisions of this Act ought to be delivered as aforesaid shall be delivered at the *British Museum* between the Hours of Ten in the Forenoon and Four in the Afternoon on any Day except *Sunday, Ash Wednesday, Good Friday, and Christmas Day*, to one of the Officers of the said Museum, or to some Person authorized by the Trustees of the said Museum to receive the same, and such Officer or other Person receiving such Copy is hereby required to give a Receipt in Writing for the same, and such Delivery shall to all Intents and Pur-

poses be deemed to be good and sufficient Delivery under the Provisions of this Act.

VIII. And be it enacted, That a Copy of the whole of every Book, and of any second or subsequent Edition of every Book containing Additions and Alterations, together with all Maps and Prints belonging thereto, which after the passing of this Act shall be published, shall, on Demand thereof in Writing, left at the Place of Abode of the Publisher thereof at any Time within Twelve Months next after the Publication thereof, under the Hand of the Officer of the Company of Stationers who shall from Time to Time be appointed by the said Company for the Purposes of this Act, or under the Hand or any other Person thereto authorized by the Persons or Bodies Politic and Corporate, Proprietors and Managers of the Libraries following, (*videlicet*,) the *Bodleian* Library at *Oxford*, the Public Library at *Cambridge*, the Library of the Faculty of Advocates at *Edinburgh*, the Library of the College of the Holy and Undivided Trinity of Queen *Elizabeth* near *Dublin*, be delivered, upon the Paper on which the largest Number of Copies of such Book or Edition shall be printed for Sale, in the like Condition as the Copies prepared for Sale, by the Publisher thereof respectively, within One Month after Demand made thereof in Writing as aforesaid, to the said Officer of the said Company of Stationers for the Time being, which Copies the said Officer shall and he is hereby required to receive at the Hall of the said Company, for the Use of the Library for which such Demand shall be made within such Twelve Months as aforesaid; and the said Officer is hereby required to give a Receipt in Writing for the same, and within One Month after any such Book shall be so delivered to him as aforesaid to deliver the same for the Use of such Library.

IX. Provided also, and be it enacted, That if any Publisher shall be desirous of delivering the Copy of such Book as shall be demanded on behalf of any of the said Libraries at such Library, it shall be lawful for him to deliver the same at such Library, free of Expense, to such Librarian or other Person authorized to receive the same (who is hereby required in such Case to receive and give a Receipt in Writing for the same), and such Delivery shall to all Intents and Purposes of this Act be held as equivalent to a Delivery to the said Officers of the Stationers Company.

X. And be it enacted, That if any Publisher of any such Book, or of any second or subsequent Edition of any such Book, shall neglect to deliver the same, pursuant to this Act, he shall for every such Default forfeit, besides the Value of such Copy of such Book or Edition which he ought to have

A copy of every Book to be delivered within a Month after Demand to the Officer of the Stationers Company, for the following Libraries; the *Bodleian* at *Oxford*, the Public Library at *Cambridge*, the Faculty of Advocates at *Edinburgh*, and that of Trinity College, *Dublin*.

Publishers may deliver the Copies to the Libraries, instead of at the Stationers Company.

Penalty for Default in delivering Copies for the use of the Libraries.

delivered, a Sum not exceeding Five Pounds, to be recovered by the Librarian or other Officer (properly authorized) of the Library for the Use whereof such Copy should have been delivered, in a summary Way, on Conviction before Two Justices of the Peace for the County or Place where the Publisher making default shall reside, or by Action of Debt or other Proceeding of the like Nature, at the Suit of such Librarian or other Officer, in any Court of Record in the United Kingdom, in which Action, if the Plaintiff shall obtain a Verdict, he shall recover his Costs reasonably incurred, to be taxed as between Attorney and Client.

Book of
Registry
to be
kept at
Stationers
Hall.

XI. And be it enacted, That a Book of Registry, wherein may be registered, as herein-after enacted, the Proprietorship in the Copyright of Books, and Assignments thereof, and in Dramatic and Musical Pieces, whether in Manuscript or otherwise, and Licences affecting such Copyright, shall be kept at the Hall of the Stationers Company, by the Officer appointed by the said Company for the Purposes of this Act, and shall at all convenient Times be open to the Inspection of any Person, on Payment of One Shilling for every Entry which shall be searched for or inspected in the said Book; and that such Officer shall, whenever thereunto reasonably required, give a Copy of any Entry in such Book, certified under his Hand, and impressed with the Stamp of the said Company, to be provided by them for that Purpose, and which they are hereby required to provide, to any Person requiring the same, on payment to him of the Sum of Five Shillings; and such Copies so certified and impressed shall be received in Evidence in all Courts, and in all summary Proceedings, and shall be *prima facie* Proof of the Proprietorship or Assignment of Copyright or Licence as therein expressed, but subject to be rebutted by other Evidence, and in the Case of Dramatic or Musical Pieces shall be *prima facie* Proof of the Right of Representation or Performance, subject to be rebutted as aforesaid.

Making
false Entry
in the
Book of
Registry,
a Misdemeanor.

XII. And be it enacted, That if any Person shall wilfully make or cause to be made any false Entry in the Registry Book of the Stationers Company, or shall wilfully produce or cause to be tendered in Evidence, any Paper falsely purporting to be a Copy of any Entry in the said Book, he shall be guilty of an indictable Misdemeanor, and shall be punished accordingly.

Entries of
Copyright
may be
made in
the Book
of Re-
gistry.

XIII. And be it enacted, That after the passing of this Act it shall be lawful for the Proprietor of Copyright in any Book heretofore published, or in any Book hereafter to be published, to make Entry in the Registry Book of the Stationers Company of the Title of such Book, the Time of the

first Publication thereof, the Name and Place of Abode of the Publisher thereof, and the Name and Place of Abode of the Proprietor of the Copyright of the said Book or of any portion of such Copyright in the Form in that behalf given in the Schedule to this Act annexed, upon Payment of the Sum of Five Shillings to the Officer of the said Company; and that it shall be lawful for every such Registered Proprietor to assign his Interest, or any portion of his Interest therein, by making Entry in the said Book of Registry of such Assignment, and of the Name and Place of Abode of the Assignee thereof, in the Form given in that Behalf in the said Schedule, on payment of the like Sum; and such Assignment so entered shall be effectual in Law to all Intents and Purposes whatsoever, without being subject to any Stamp or Duty, and shall be of the same Force and Effect as if such Assignment had been made by Deed.

XIV. And be it enacted, That if any Person shall deem himself aggrieved by any Entry made under colour of this Act in the said Book of Registry, it shall be lawful for such Person to apply by Motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in Term Time, or to apply by Summons to any Judge of either of such Courts in Vacation, for an Order that such Entry may be expunged or varied; and that upon any such Application by Motion or Summons to either of the said Courts, or to a Judge as aforesaid, such Court or Judge shall make such Order for expunging, varying, or confirming such Entry, either with or without costs, as to such Court or Judge shall seem just; and the Officer appointed by the Stationers Company for the Purposes of this Act, shall, on the Production to him of any such Order for expunging or varying any such Entry, expunge or vary the same according to the Requisitions of such Order.

XV. And be it enacted, That if any Person shall, in any Part of the *British* Dominions, after the passing of this Act, print or cause to be printed, either for Sale or Exportation, any Book in which there shall be subsisting Copyright, without the Consent in Writing of the Proprietor thereof, or shall import for Sale or Hire any such Book so having been unlawfully printed from Parts beyond the Sea, or knowing such Book to have been so unlawfully printed, or imported, shall sell, publish, or expose to Sale or Hire, or cause to be sold, published, or exposed to Sale or Hire, or shall have in his Possession for Sale or Hire, any such Book so unlawfully printed or imported, without such Consent as aforesaid, such Offender shall be liable to a special Action on the Case at the Suit of the Proprietor of such Copyright, to be brought in any

Persons aggrieved by any Entry in the Book of Registry may apply to a Court of Law in Term, or Judge in Vacation, who may order such Entry to be varied or expunged.

Remedy for the Piracy of Books by Action on the Case.

Court of Record in that part of the *British* Dominions in which the offence shall be committed: Provided always, that in *Scotland* such Offender shall be liable to an Action in the Court of Session in *Scotland*, which shall and may be brought and prosecuted in the same Manner in which any other Action of Damages to the like amount may be brought and prosecuted there.

In Actions for Piracy the Defendant to give Notice of the Objections to the Plaintiff's Title on which he means to rely.

XVI. And be it enacted, That after the passing of this Act in any Action brought within the *British* Dominions against any Person for printing any such Book for Sale, Hire, or Exportation, or for importing, selling, publishing, or exposing to Sale or Hire, or causing to be imported, sold, published, or exposed to Sale or Hire, any such Book, the Defendant, on pleading thereto, shall give to the Plaintiff a Notice in Writing of any Objections on which he means to rely on the Trial of such Action; and if the nature of his defence be, that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he shall by such Action claim Copyright, or is not the Proprietor of the Copyright therein, or that some other Person than the Plaintiff was the Author or first Publisher of such Book, or is the Proprietor of the Copyright therein, then the Defendant shall specify in such Notice the Name of the Person who he alleges to have been the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, together with the Title of such Book, and the Time when and the place where such Book was first published, otherwise the Defendant in such Action shall not at the Trial or Hearing of such Action be allowed to give any Evidence that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he claims such Copyright as aforesaid, or that he was not the Proprietor of the Copyright therein; and at such Trial or Hearing no other Objection shall be allowed to be made on behalf of such Defendant than the Objections stated in such Notice, or that any other Person was the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, than the Person specified in such Notice, or give in Evidence in support of his Defence any other Book than one substantially corresponding in Title, Time, and Place of Publication with the Title, Time, and Place specified in such Notice.

No Person except the Proprietor, &c., shall import into the British

XVII. And be it enacted, That after the passing of this Act it shall not be lawful for any Person not being the Proprietor of the Copyright, or some Person authorized by him, to import into any Part of the United Kingdom, or into any other Part of the *British* Dominions, for Sale or Hire, any printed Book first composed or written or printed and pub-

lished in any Part of the said United Kingdom, wherein there shall be Copyright, and reprinted in any Country or Place whatsoever out of the *British* Dominions; and if any Person not being such Proprietor or Person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for Sale or Hire, any such printed Book, into any Part of the *British* Dominions, contrary to the true Intent and Meaning of this Act, or shall knowingly sell, publish, or expose to Sale or let to Hire, or have in his Possession for Sale or Hire, any such Book, then every such Book shall be forfeited, and shall be seized by any Officer of Customs or Excise, and the same shall be destroyed by such Officer; and every Person so offending, being duly convicted thereof before Two Justices of the Peace for the County or Place in which such Book shall be found, shall also for every such Offence forfeit the Sum of Ten Pounds, and Double the Value of every Copy of such Book which he shall so import or cause to be imported into any Part of the *British* Dominions, or shall knowingly sell, publish, or expose to Sale or let to Hire, or shall cause to be sold, published, or exposed to Sale or let to Hire, or shall have in his Possession for Sale or Hire, contrary to the true Intent and Meaning of this Act, Five Pounds to the Use of such Officer of Customs or Excise, and the Remainder of the Penalty to the Use of the Proprietor of the Copyright in such Book.

XVIII. And be it enacted, That when any Publisher or other Person shall, before or at the Time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the Proprietor of any Encyclopædia, Review, Magazine, Periodical Work, or Work published in a Series of Books or Parts, or any Book whatsoever, and shall have employed or shall employ any Persons to compose the same, or any Volumes, Parts, Essays, Articles, or Portions thereof, for Publication in or as Part of the same, and such Work, Volumes, Parts, Essays, Articles, or Portions shall have been or shall hereafter be composed under such Employment, on the Terms that the Copyright therein shall belong to such Proprietor, Projector, Publisher, or Conductor, and paid for by such Proprietor, Projector, Publisher, or Conductor, the Copyright in every such Encyclopædia, Review, Magazine, Periodical Work, and Work published in a Series of Books or Parts, and in every Volume, Part, Essay, Article, and Portion so composed and paid for, shall be the Property of such Proprietor, Projector, Publisher, or other Conductor, who shall enjoy the same Rights as if he were the actual Author thereof, and shall have such Term of Copyright therein as is given to the Authors of Books by this

Dominions for Sale or Hire any Book first composed, &c., within the United Kingdom, and reprinted elsewhere under Penalty of Forfeiture thereof, and also of 10% and Double the Value.

Books may be seized by Officers of Customs or Excise.

As to the Copyright in Encyclopædias, Periodicals, and Works published in a Series, Reviews, or Magazines.

Proviso for Authors who have reserved the Right of publishing their Articles in a separate Form.

Act; except only that in the case of Essays, Articles, or Portions forming Part of and first published in Reviews, Magazines, or other Periodical Works of a like Nature, after the Term of Twenty-eight Years from the first Publication thereof respectively the Right of publishing the same in a separate Form shall revert to the Author for the Remainder of the Term given by this Act: Provided always, that during the Term of Twenty-eight Years the said Proprietor, Projector, Publisher, or Conductor shall not publish any such Essay, Article, or Portion separately or singly without the Consent previously obtained of the Author thereof, or his Assigns: Provided also, that nothing herein contained shall alter or affect the Right of any Person who shall have been or who shall be so employed as aforesaid to publish any such his Composition in a separate Form, who by any Contract, express or implied, may have reserved or may hereafter reserve to himself such Right; but every Author reserving, retaining, or having such Right shall be entitled to the Copyright in such Composition when published in a separate Form, according to this Act, without prejudice to the Right of such Proprietor, Projector, Publisher, or Conductor as aforesaid.

Proprietors of Encyclopædias, Periodicals, and Works published in a Series may enter at once at Stationers Hall, and thereon have the Benefit of the Registration of the whole. The Provisions of 3 & 4 W. 4, c. 15, extended to Musical Compositions, and the Term of Copyright as provided

XIX. And be it enacted, That the Proprietor of the Copyright in any Encyclopædia, Review, Magazine, Periodical Work, or other Work published in a Series of Books or Parts, shall be entitled to all the Benefits of the Registration at Stationers Hall under this Act, on entering in the said Book of Registry the Title of such Encyclopædia, Review, Periodical Work, or other Work published in a Series of Books or Parts, the Time of the first Publication of the First Volume, Number or Part thereof, or of the first Number or Volume first published after the passing of this Act in any such Work which shall have been published heretofore, and the Name and Place of Abode of the Proprietor thereof, and of the Publisher thereof, when such Publisher shall not also be the Proprietor thereof.

XX. And whereas an Act was passed in the Third Year of the Reign of His late Majesty, to amend the Law relating to Dramatic Literary Property, and it is expedient to extend the Term of the sole Liberty of representing Dramatic Pieces given by that Act to the full Time by this Act provided for the Continuance of Copyright: And whereas it is expedient to extend to Musical Compositions the Benefits of that Act and also of this Act; be it therefore enacted, That the Provisions of the said Act of His late Majesty, and of this Act, shall apply to Musical Compositions, and that the sole Liberty of representing or performing, or causing or permitting to

be represented or performed, any Dramatic Piece or Musical Composition, shall endure and be the Property of the Author thereof, and his Assigns, for the Term in this Act provided for the Duration of Copyright in Books; and the Provisions hereinbefore enacted in respect of the Property of such Copyright, and of registering the same, shall apply to the Liberty of representing or performing any Dramatic Piece or Musical Composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public Representation or Performance of any Dramatic Piece or Musical Composition shall be deemed equivalent, in the Construction of this Act, to the first Publication of any Book: Provided always, that in case of any Dramatic Piece or Musical Composition in Manuscript, it shall be sufficient for the Person having the sole Liberty of representing or performing, or causing to be represented or performed the same, to register only the Title thereof, the Name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor thereof, and the Time and Place of its first Representation or Performance.

XXI. And be it enacted, That the Person who shall at any Time have the sole Liberty of representing such Dramatic Piece or Musical Composition shall have and enjoy the Remedies given and provided in the said Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, passed to amend the Laws relating to Dramatic Literary Property, during the whole of his Interest therein, as fully as if the same were re-enacted in this Act.

XXII. And be it enacted, That no Assignment of the Copyright of any Book consisting of or containing a Dramatic Piece or Musical Composition shall be holden to convey to the Assignee the Right of representing or performing such Dramatic Piece or Musical Composition, unless an Entry in the said Registry Book shall be made of such Assignment, wherein shall be expressed the Intention of the Parties that such Right should pass by such Assignment.

XXIII. And be it enacted, That all Copies of any Book wherein there shall be Copyright, and of which Entry shall have been made in the said Registry Book, and which shall have been unlawfully printed or imported without the Consent of the registered Proprietor of such Copyright, in Writing under his Hand first obtained, shall be deemed to be the Property of the Proprietor of such Copyright, and who shall be registered as such, and such registered Proprietor shall, after Demand thereof in Writing, be entitled to sue for and recover the same, or Damages for the Detention

by this Act, applied to the Liberty of representing Dramatic Pieces and Musical Compositions.

Proprietors of Right of Dramatic Representations shall have all the Remedies given by 3 & 4 W. 4, c. 15.

Assignment of Copyright of a Dramatic Piece not to convey the Right of Representation.

Books pirated shall become the Property of the Proprietor of the Copyright, and may be recovered by Action.

thereof, in an Action of Detinue, from any Party who shall detain the same, or to sue for and recover Damages for the Conversion thereof in an Action of Trover.

No Proprietor of Copyright commencing after this Act shall sue or proceed for any Infringement before making Entry in the Book of Registry.

Proviso for Dramatic Pieces.

Copyright shall be Personal Property.

General Issue.

Limitations of Actions;

not to extend to Actions, &c., in respect of

XXIV. And be it enacted, That no Proprietor of Copyright in any Book which shall be first published after the passing of this Act shall maintain any Action or Suit, at Law or in Equity, or any summary Proceeding, in respect of any Infringement of such Copyright, unless he shall, before commencing such Action, Suit, or Proceeding, have caused an Entry to be made, in the Book of Registry of the Stationers Company, of such Book, pursuant to this Act: Provided always, that the Omission to make such Entry shall not affect the Copyright in any Book, but only the Right to sue or proceed in respect of the Infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the Remedies which the Proprietor of the sole Liberty of representing any Dramatic Piece shall have by virtue of the Act passed in the Third Year of the Reign of His late Majesty King *William* the Fourth, to amend the Laws relating to Dramatic Literary Property, or of this Act, although no Entry shall be made in the Book of Registry aforesaid.

XXV. And be it enacted, That all Copyright shall be deemed Personal Property, and shall be transmissible by Bequest, or, in case of Intestacy, shall be subject to the same Law of Distribution as other Personal Property, and in *Scotland* shall be deemed to be Personal and Moveable Estate.

XXVI. And be it enacted, That if any Action or Suit shall be commenced or brought against any Person or Persons whomsoever for doing or causing to be done anything in pursuance of this Act, the Defendant or Defendants in such Action may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict shall be given for the Defendant, or the Plaintiff shall become nonsuited, or discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath; and that all Actions, Suits, Bills, Indictments, or Informations, for any Offence that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of none effect; provided that such Limitation of Time shall not extend or be construed to extend to any Actions, Suits, or other Proceedings which under the Authority of this Act shall or may be brought, sued, or commenced for or in respect of any

Copies of Books to be delivered for the Use of the *British Museum*, or of any One of the Four Libraries hereinbefore mentioned.

the Delivery of Books.

XXVII. Provided always, and be it enacted, That nothing in this Act contained shall affect or alter the Rights of the Two Universities of *Oxford* and *Cambridge*, the Colleges or Houses of Learning within the same, the Four Universities in *Scotland*, the College of the Holy and Undivided Trinity of Queen *Elizabeth* near *Dublin*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, in any Copyrights heretofore and now vested or hereafter to be vested in such Universities and Colleges respectively, anything to the contrary herein contained notwithstanding.

Saving the Right of the Universities and the Colleges of *Eton*, *Westminster*, and *Winchester*.

XXVIII. Provided also, and be it enacted, That nothing in this Act contained shall affect, alter, or vary any Right subsisting at the Time of passing of this Act, except as herein expressly enacted; and all Contracts, Agreements, and Obligations made and entered into before the passing of this Act, and all Remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

Saving all subsisting Rights, Contracts, and Engagements.

XXIX. And be it enacted, That this Act shall extend to the United Kingdom of *Great Britain* and *Ireland*, and to every Part of the *British* Dominions.

Extent of the Act.

XXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

Act may be amended this Session.

[*Repealed Statute Law Revision* (2) *Act*, 1874.]

SCHEDULE to which the preceding Act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers Hall.

We, the undersigned, *A.B.* of the Author of a certain Book, intituled *Y.Z.* [or the personal Representative of the Author, as the case may be], and *C.D.* do hereby certify, That we have consented and agreed to accept the Benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, Cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said *A.B.* or *C.D.*

Dated this Day of 18 .

Witness

(Signed) *A.B.*
C.D.

To the Registering Officer appointed by the Stationers Company.

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any Book
previously registered.

I *A.B.* of being the Assigner of the Copyright of the Book
hereunder described, do hereby require you to make Entry of the
Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
<i>Y.Z.</i>	<i>A.B.</i>	<i>C.D.</i>

Dated this day of 18 .
(Signed) *A.B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any Book
previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	<i>[Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.]</i>	<i>A.B.</i>	<i>C.D.</i>

CORRUPT PRACTICES AT ELECTIONS.

A. PARLIAMENTARY ELECTIONS.

46 & 47 VICT. c. 51, s. 9, SUB-S. 2, AND SS. 10, 64 (CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883).

Sect. 9, sub-s. 2. Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such an election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

Sect. 10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions hereinafter contained in this Act, shall, on summary conviction, be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act), held for or within the county or borough in which the illegal practice has been committed.

Sect. 64. . . . The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to municipal corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any other Acts for the time being in force (whether passed before or after the commencement of the Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office, and the expression "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly.

33 & 34
Vict. c. 75.
38 & 39
Vict. c. 55.

B. MUNICIPAL ELECTIONS.

45 & 46 VICT. c. 50, s. 7 (MUNICIPAL CORPORATIONS ACT, 1882).

Sect. 7.

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor.

"Municipal election" means an election to a corporate office.

47 & 48 VICT. c. 70, s. 6, SUB-S. 2, s. 7, s. 35, SUB-S. 1, s. 36,
SUB-S. 1, FIRST SCHEDULE.

Sect. 6, sub-s. 2; *identical with s. 9, sub-s. 2 of 46 & 47 Vict. c. 51, except that word "municipal" is inserted before "election."* *Supra.*

Sect. 7; *identical with s. 10 (idem), except that for the words "whether under the foregoing sections or under the provisions hereinafter contained in this Act" are substituted "in reference to a municipal election."* *Supra.*

Sect. 35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the City of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes, each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city.

Sect. 36 (1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to the elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

FIRST SCHEDULE.

Elections to which this Act extends.

In England.

Office.

Member of local board as defined by the Public Health Act, 1875.

Member of Improvement Commissioners as defined by the Public Health Act, 1875.

Guardian elected under the Poor Law Amendment Act, 1834.

Member of School Board.

C. COUNTY COUNCIL ELECTIONS

51 & 52 VICT. c. 41, s. 75 (LOCAL GOVERNMENT ACT, 1888).

Sect. 75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely,—

47 & 48
Vict. c. 70.

Part IV. (as amended by the Municipal Elections (Corrupt Practices) Act, 1884) . . . shall, so far as the same are unrepealed and are consistent with the provisions of the Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said councils and their chairman, members, committees and officers, and to the other provisions of this Act . . .

INDECENT PRINTS.

5 GEO. 4, c. 83, s. 4.

[1825.]

IV. And be it further enacted, That every Person wilfully exposing to view, in any Street, Road, Highway, or public Place, any obscene Print, Picture, or other indecent Exhibition, shall be deemed a Rogue and Vagabond, within the true Intent and Meaning of this Act; and it shall be lawful for any Justice of the Peace to commit such Offender (being thereof convicted before him by the Confession of such Offender, or by the Evidence on Oath of One or more credible Witness or Witnesses) to the House of Correction, there to be kept to hard Labour for any Time not exceeding Three Calendar Months.

1 & 2 VICT. c. 38, s. 2.

[1838.]

Sect. 2. And whereas by the said recited Act (i.e., *the 5 Geo. 4, c. 83, s. 4*), it is enacted, that every person wilfully exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition, shall, on summary conviction thereof be liable to punishment

as therein provided: And whereas doubts have arisen whether the exposing to public view in the windows of shops in streets, highways, or other public places, of any obscene print, picture, or other indecent exhibition, is an offence within the meaning of the said recited Act; Be it therefore declared and enacted, that every person who shall wilfully expose or cause to be exposed to public view in the window or other part of any shop or other building situate in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition to public view within the intent and meaning of the said Act, and shall accordingly be liable to be proceeded against, and on conviction, to be punished under the provisions of the said Act.

20 & 21 VICT. c. 83.

An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles.

[25th August, 1857.]

WHEREAS it is expedient to give additional Powers for the Suppression of the Trade in Obscene Books, Prints, Drawings, and other Obscene Articles: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. It shall be lawful for any Metropolitan Police Magistrate or other Stipendiary Magistrate, or for any Two Justices of the Peace, upon Complaint made before him or them upon Oath that the Complainant has Reason to believe, and does believe, that any Obscene Books, Papers, Writings, Prints, Pictures, Drawings, or other Representations are kept in any House, Shop, Room, or other Place within the Limits of the Jurisdiction of any such Magistrate or Justices, for the Purpose of Sale or Distribution, Exhibition for Purposes of Gain, lending upon Hire, or being otherwise published for Purposes of Gain, which Complainant shall also state upon Oath that One or more Articles of the like Character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such Place, so as to satisfy such Magistrate or Justices that the Belief of the said Complainant is well founded, and upon such Magistrate or Justices being also satisfied that any of such Articles so kept for any of the

Justices,
&c., may
authorize
Search of
suspected
Premises.

Purposes aforesaid are of such a Character and Description that the Publication of them would be a Misdemeanor, and proper to be prosecuted as such, to give Authority by Special Warrant to any Constable or Police Officer into such House, Shop, Room, or other Place, with such Assistance as may be necessary, to enter in the Daytime, and, if necessary, to use Force, by breaking open Doors or otherwise, and to search for and seize all such Books, Papers, Writings, Prints, Pictures, Drawings, or other Representations as aforesaid found in such House, Shop, Room, or other Place, and to carry all the Articles so seized before the Magistrate or Justices issuing the said Warrant, or some other Magistrate or Justices exercising the same Jurisdiction; and such Magistrate or Justices shall thereupon issue a Summons calling upon the Occupier of the House or other Place which may have been so entered by virtue of the said Warrant to appear within Seven Days before such Police Stipendiary Magistrate or any Two Justices in Petty Sessions for the District, to show Cause why the Articles so seized should not be destroyed; and if such Occupier or some other Person claiming to be the Owner of the said Articles shall not appear within the Time aforesaid, or shall appear, and such Magistrate or Justice shall be satisfied that such Articles or any of them are of the Character stated in the Warrant, and that such or any of them have been kept for any of the Purposes aforesaid, it shall be lawful for the said Magistrate or Justices, and he or they are hereby required to order the Articles so seized, except such of them as he or they may consider necessary to be preserved as Evidence in some further Proceeding, to be destroyed at the Expiration of the Time hereinafter allowed for lodging an Appeal, unless Notice of Appeal as hereinafter mentioned be given, and such Articles shall be in the meantime impounded; and if such Magistrate or Justices shall be satisfied that the Articles seized are not of the Character stated in the Warrant, or have not been kept for any of the Purposes aforesaid, he or they shall forthwith direct them to be restored to the Occupier of the House or other Place in which they were seized.

Tender of
Amends,
&c.

II. No Plaintiff shall recover in any Action for any Irregularity, Trespass, or other wrongful Proceeding made or committed in the Execution of this Act, or in, under, or by virtue of any Authority hereby given, if Tender of sufficient Amends shall have been made by or on behalf of the Party who shall have committed such Irregularity, Trespass, or other wrongful Proceeding, before such Action brought; and in case no Tender shall have been made it shall be lawful for the Defendant in any such Action, by Leave of the Court

where such Action shall depend, at any Time before Issue is joined, to pay into Court such Sum of Money as he shall think fit, whereupon such Proceeding, Order, and Adjudication shall be had and made in and by such Court as in other Actions where Defendants are allowed to pay Money into Court.

III. No Action, Suit, or Information, or any other Proceeding, of what Nature soever, shall be brought against any Person for anything done or omitted to be done in pursuance of this Act, or in the Execution of the Authorities under this Act, unless Notice in Writing shall be given by the Party intending to prosecute such Action, Suit, Information, or other Proceeding, to the intended Defendant, One Calendar Month at least before prosecuting the same, nor unless such Action, Suit, Information, or other Proceeding shall be brought or commenced within Three Calendar Months next after the Act or Omission complained of, or in case there shall be a Continuation of Damage, then within Three Calendar Months next after the doing such Damage shall have ceased.

Limitation
of Actions.

IV. Any Person aggrieved by any Act or Determination of such Magistrate or Justices in or concerning the Execution of this Act, may appeal to the next General or Quarter Sessions for the County, Riding, Division, City, Borough, or Place in and for which such Magistrate or Justices shall have so acted, giving to the Magistrate or Justices of the Peace whose Act or Determination shall be appealed against Notice in Writing of such Appeal, and of the Grounds thereof, within Seven Days after such Act or Determination and before the next General or Quarter Sessions, and entering within such Seven Days into a Recognizance, with sufficient Surety, before a Justice of the Peace for the County, City, Borough, or Place in which such Act or Determination shall have taken place, personally to appear and prosecute such Appeal, and to abide the Order of and pay such Costs as shall be awarded by such Court of Quarter Sessions or any Adjournment thereof, and the Court at such General or Quarter Sessions shall hear and determine the Matter of such Appeal, and shall make such Order therein as shall to the said Court seem meet; and such Court, upon hearing and finally determining such Appeal, shall and may, according to their Discretion, award such Costs to the Party appealing or appealed against as they shall think proper; and if such Appeal be dismissed or decided against the Appellant or be not prosecuted, such Court may order the Articles seized forthwith to be destroyed: Provided always, that it shall not be lawful for the Appellant on the Hearing of any such Appeal to go into or give

Appeal.

Evidence of any other Grounds of Appeal against any such Order, Act, or Determination than those set forth in such Notice of Appeal.

V. This Act shall not extend to *Scotland*.

LIBEL AND REGISTRATION.

32 GEO. 3, c. 60 (Fox's Act). [1791.]

An Act to remove Doubts respecting the Functions of Juries in Cases of Libel.

Preamble. WHEREAS doubts have arisen whether on the Trial of an Indictment or Information for the making or publishing any Libel, where an Issue or Issues are joined between the King and the Defendant or Defendants, on the Plea of Not guilty pleaded, it be competent to the Jury impanelled to try the same to give their Verdict upon the whole Matter in Issue: Be it therefore declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, on every such Trial, the Jury sworn to try the Issue may give a general Verdict of Not guilty upon the whole Matter put in Issue upon such Indictment or Information; and shall not be required or directed, by the Court or Judge before whom such Indictment or Information shall be tried, to find the Defendant or Defendants Guilty, merely on the Proof of the Publication by such Defendant or Defendants of the Paper charged to be a Libel, and of the Sense ascribed to the same in such Indictment or Information.

But the Court shall give their Opinion and Directions. II. Provided always, That, on every such Trial, the Court or Judge before whom such Indictment or Information shall be tried, shall, according to their or his Discretion, give their or his Opinion and Directions to the Jury on the Matter in Issue between the King and the Defendant or Defendants, in like Manner as in other Criminal Cases.

Jury may find a special Verdict. III. Provided also, That nothing herein contained shall extend, or be construed to extend, to prevent the Jury from finding a Special Verdict, in their Discretion, as in other Criminal Cases.

IV. Provided also, That in case the Jury shall find the Defendant or Defendants Guilty, it shall and may be lawful for the said Defendant or Defendants to move in Arrest of

Judgment, on such Ground and in such Manner as by Law he or they might have done before the passing of this Act; any Thing herein contained to the contrary notwithstanding.

60 GEO. 3, c. 8, ss. 1 and 2.

An Act for the more effectual Prevention and Punishment of blasphemous and seditious Libels. [30th December, 1819.]

WHEREAS it is expedient to make more effectual Provision for the Punishment of blasphemous and seditious Libels; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, in every Case in which any Verdict or Judgment by Default shall be had against any Person for composing, printing or publishing any blasphemous Libel, or any seditious Libel, tending to bring into Hatred or Contempt the Person of His Majesty, His Heirs or Successors, or The Regent, or the Government and Constitution of the United Kingdom as by Law established, or either House of Parliament, or to excite His Majesty's Subjects to attempt the Alteration of any Matter in Church or State as by Law established, otherwise than by lawful Means, it shall be lawful for the Judge, or the Court before whom or in which such Verdict shall have been given, or the Court in which such Judgment by Default shall be had, to make an Order for the Seizure and carrying away and detaining in safe Custody, in such Manner as shall be directed in such Order, all Copies of the Libel which shall be in the Possession of the Person against whom such Verdict or Judgment shall have been had, or in the Possession of any other Person named in the Order for his Use; Evidence upon Oath having been previously given to the Satisfaction of such Court or Judge, that a Copy or Copies of the said Libel is or are in the Possession of such other Person for the Use of the Person against whom such Verdict or Judgment shall have been had as aforesaid; and in every such Case it shall be lawful for any Justice of the Peace, or for any Constable or other Peace Officer acting under any such Order, or for any Person or Persons acting with or in Aid of any such Justice of the Peace, Constable, or other Peace Officer, to search for any Copies of such Libel in any House, Building, or other Place whatsoever belonging to the Person against whom any

Court to make Order for the Seizure of Copies of the Libel in Possession of the Persons against whom Verdicts shall have been had, &c.

such Verdict or Judgment shall have been had, or to any other Person so named, in whose Possession any Copies of any such Libel, belonging to the Person against whom any such Verdict or Judgment shall have been had, shall be; and in case Admission shall be refused or not obtained within a reasonable Time after it shall have been first demanded, to enter by Force by Day into any such House, Building, or Place whatsoever, and to carry away all Copies of the Libel there found, and to detain the same in safe Custody until the same shall be restored under the Provisions of this Act, or disposed of according to any further Order made in relation thereto.

Copies of
Libels so
seized to
be restored
if Judgment
for
Defendant;
otherwise
to be dis-
posed of as
the Court
shall
direct.

II. And be it further enacted, That if in any such Case as aforesaid Judgment shall be arrested, or if, after Judgment shall have been entered, the same shall be reversed upon any Writ of Error, all Copies so seized shall be forthwith returned to the Person or Persons from whom the same shall have been so taken as aforesaid, free of all Charge and Expence, and without the Payment of any Fees whatever; and in every Case in which final Judgment shall be entered upon the Verdict so found against the Person or Persons charged with having composed, printed, or published such Libel, then all Copies so seized shall be disposed of as the Court in which such Judgment shall be given shall order and direct.

3 & 4 VICT. c. 9.

An Act to give summary Protection to Persons employed in the Publication of Parliamentary Papers. [14th April, 1849.]

WHEREAS it is essential to the due and effectual Exercise and discharge of the Functions and Duties of Parliament, and to the Promotion of wise Legislation, that no Obstructions or Impediments should exist to the Publication of such of the Reports, Papers, Votes, or Proceedings of either House of Parliament as such House of Parliament may deem fit or necessary to be published: And whereas Obstructions or Impediments to such Publication have arisen, and hereafter may arise, by means of Civil or Criminal Proceedings being taken against Persons employed by or acting under the Authority of the Houses of Parliament, or One of them, in the Publication of such Reports, Papers, Votes, or Proceedings; by reason and for Remedy whereof it is expedient that more speedy Protection should be afforded to all Persons

acting under the Authority aforesaid, and that all such Civil or Criminal Proceedings should be summarily put an end to and determined in manner herein-after mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for any Person or Persons who now is or are, or hereafter shall be, a Defendant or Defendants in any Civil or Criminal Proceeding commenced or prosecuted in any Manner soever, for or on account or in respect of the Publication of any such Report, Paper, Votes, or Proceedings by such Person or Persons, or by his, her, or their Servant or Servants, by or under the Authority of either House of Parliament, to bring before the Court in which such Proceeding shall have been or shall be so commenced or prosecuted, or before any Judge of the same (if One of the Superior Courts at *Westminster*), first giving Twenty-four Hours Notice of his Intention so to do to the Prosecutor or Plaintiff in such Proceeding, a Certificate under the Hand of the Lord High Chancellor of *Great Britain*, or the Lord Keeper of the Great Seal, or of the Speaker of the House of Lords, for the Time being, or of the Clerk of the Parliaments, or of the Speaker of the House of Commons, or of the Clerk of the same House, stating that the Report, Paper, Votes, or Proceedings, as the Case may be, in respect whereof such Civil or Criminal Proceeding shall have been commenced, or prosecuted, was published by such Person or Persons, or by his, her, or their Servant or Servants, by Order or under the Authority of the House of Lords or of the House of Commons, as the Case may be, together with an Affidavit verifying such Certificate; and such Court or Judge shall thereupon immediately stay such Civil or Criminal Proceeding, and the same, and every Writ or Process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act.

II. And be it enacted, That in case of any Civil or Criminal Proceeding hereafter to be commenced or prosecuted for or on account or in respect of the Publication of any Copy of such Report, Paper, Votes, or Proceedings, it shall be lawful for the Defendant or Defendants at any Stage of the Proceedings to lay before the Court or Judge such Report, Paper, Votes, or Proceedings, and such Copy, with an Affidavit verifying such Report, Paper, Votes, or Proceedings, and the Correctness of such Copy, and the Court or Judge shall immediately stay such Civil or Criminal Proceeding, and the same, and every Writ or Process issued therein, shall be and shall be deemed

Proceedings Criminal or Civil, against Persons for Publication of Papers printed by Order of Parliament, to be stayed, upon Delivery of a Certificate and Affidavit to the Effect that such Publication is by Order of either House of Parliament.

Proceedings to be stayed when commenced in respect of a Copy of an authenticated Report, &c.

and taken to be finally put an end to, determined, and superseded by virtue of this Act.

In Proceedings for printing any Extract or Abstract of a Paper, it may be shown that such Extract was *bonâ fide* made.

Act not to affect the Privileges of Parliament.

III. And be it enacted, That it shall be lawful in any Civil or Criminal Proceeding to be commenced or prosecuted for printing any Extract from or Abstract of such Report, Paper, Votes, or Proceedings, to give in Evidence under the General Issue such Report, Paper, Votes, or Proceedings, and to show that such Extract or Abstract was published *bonâ fide* and without Malice; and if such shall be the Opinion of the Jury, a Verdict of Not guilty shall be entered for the Defendant or Defendants.

IV. Provided always, and it is hereby expressly declared and enacted, That nothing herein contained shall be deemed or taken, or held or construed, directly or indirectly, by Implication or otherwise, to affect the Privileges of Parliament in any Manner whatsoever.

6 & 7 VICT. c. 96 (LORD CAMPBELL'S ACT).

An Act to amend the Law respecting defamatory Words and Libel. [24th August, 1843.]

Offer of an Apology admissible in Evidence in mitigation of Damages.

FOR the better Protection of private Character, and for more effectually securing the Liberty of the Press, and for better preventing Abuses in exercising the said Liberty: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in any Action for Defamation it shall be lawful for the Defendant (after Notice in Writing of his Intention so to do, duly given to the Plaintiff at the Time of filing or delivering the Plea in such Action,) to give in Evidence, in mitigation of Damages, that he made or offered an Apology to the Plaintiff for such Defamation before the Commencement of the Action, or as soon afterwards as he had an Opportunity of doing so, in case the Action shall have been commenced before there was an Opportunity of making or offering such Apology.

In an Action against a Newspaper for Libel, the Defendant may plead that

II. And be it enacted, That in an Action for a Libel contained in any public Newspaper or other periodical Publication it shall be competent to the Defendant to plead that such Libel was inserted in such Newspaper or other periodical Publication without actual Malice, and without gross Negligence, and that before the Commencement of the Action, or at the earliest Opportunity afterwards, he inserted in such

Newspaper or other periodical Publication a full Apology for the said Libel, or, if the Newspaper or periodical Publication in which the said Libel appeared should be ordinarily published at Intervals exceeding One Week, had offered to publish the said Apology in any Newspaper or periodical Publication to be selected by the Plaintiff in such Action; and that every such Defendant shall upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication of such Libel, and such Payment into Court shall be of the same Effect and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts herein-before required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for the further Amendment of the Law and the better Advancement of Justice*; and that to such Plea to such Action it shall be competent to the Plaintiff to reply generally, denying the whole of such Plea.

it was inserted without Malice and without Neglect, and may pay Money into Court as Amends.

3 & 4 W. 4, c. 42.

[Words in italics were repealed by 42 & 43 Vict. c. 59, Schedule, Part II., and 46 & 47 Vict. c. 49, s. 4.]

III. And be it enacted, That if any Person shall publish or threaten to publish any Libel upon any other Person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any Matter or Thing touching any other Person, with Intent to extort any Money or Security for Money, or any valuable Thing from such or any other Person, or with Intent to induce any Person to confer or procure for any Person any Appointment or Office of Profit or Trust, every such Offender, on being convicted thereof, shall be liable to be imprisoned, with or without Hard Labour, in the Common Gaol or House of Correction, for any Term not exceeding Three Years: Provided always, that nothing herein contained shall in any Manner alter or affect any Law now in force in respect of the sending or Delivery of threatening Letters or Writings.

Publishing or threatening to publish a Libel, or proposing to abstain from publishing any thing, with Intent to extort Money, punishable by Imprisonment and Hard Labour.

IV. And be it enacted, That if any Person shall maliciously publish any defamatory Libel knowing the same to be false, every such Person, being convicted thereof, shall be liable to be imprisoned in the Common Gaol or House of Correction for any Term not exceeding Two Years, and to pay such Fine as the Court shall award.

False defamatory Libel punishable by Imprisonment and Fine;

Malicious
defamatory
Libel, by
Imprison-
ment or
Fine.

Proceed-
ings upon
the Trial
of an In-
dictment
or Informa-
tion for a
defamatory
Libel.

Double
Plea.

Proviso as
to Plea of
Not Guilty
in Civil and
Criminal
Proceed-
ings.

Evidence
to rebut
prima
facie Case
of Publica-
tion by an
Agent.

V. And be it enacted, That if any Person shall maliciously publish any defamatory Libel, every such Person, being convicted thereof, shall be liable to Fine or Imprisonment, or both, as the Court may award, such Imprisonment not to exceed the Term of One Year.

VI. And be it enacted, That on the Trial of any Indictment or Information for a defamatory Libel, the Defendant having pleaded such Plea as herein-after mentioned, the Truth of the Matters charged may be inquired into, but shall not amount to a Defence, unless it was for the Public Benefit that the said Matters charged should be published; and that to entitle the Defendant to give Evidence of the Truth of such Matters charged as a Defence to such Indictment or Information it shall be necessary for the Defendant, in pleading to the said Indictment or Information, to allege the Truth of the said Matters charged in the Manner now required in pleading a Justification to an Action for Defamation, and further to allege that it was for the Public Benefit that the said Matters charged should be published, and the particular Fact or Facts by Reason whereof it was for the Public Benefit that the said Matters charged should be published, to which Plea the Prosecutor shall be at liberty to reply generally, denying the whole thereof; and that if after such Plea the Defendant shall be convicted on such Indictment or Information it shall be competent to the Court, in pronouncing Sentence, to consider whether the Guilt of the Defendant is aggravated or mitigated by the said Plea, and by the Evidence given to prove or to disprove the same: Provided always, that the Truth of the Matters charged in the alleged Libel complained of by such Indictment or Information shall in no Case be inquired into without such Plea of Justification: Provided also, that in addition to such Plea, it shall be competent to the Defendant to plead a Plea of Not Guilty: Provided also, that nothing in this Act contained shall take away or prejudice any Defence under the Plea of Not Guilty which it is now competent to the Defendant to make under such Plea to any Action or Indictment or Information for defamatory Words or Libel.

VII. And be it enacted, That whensoever, upon the Trial of any Indictment or Information for the Publication of a Libel, under the Plea of Not Guilty, Evidence shall have been given which shall establish a presumptive Case of Publication against the Defendant by the Act of any other person by his Authority, it shall be competent to such Defendant to prove that such Publication was made without his Authority, Consent, or Knowledge, and that the said Publication did not arise from Want of due Care or Caution on his Part.

VIII. And be it enacted, That in the Case of any Indictment or Information by a private Prosecutor for the Publication of any defamatory Libel, if Judgment shall be given for the Defendant, he shall be entitled to recover from the Prosecutor the Costs sustained by the said Defendant by reason of such Indictment or Information; and that upon a special Plea of Justification to such Indictment or Information, if the Issue be found for the Prosecutor, he shall be entitled to recover from the Defendant the Costs sustained by the Prosecutor by reason of such Plea, such Costs so to be recovered by the Defendant or Prosecutor respectively to be taxed by the proper Officer of the Court before which the said Indictment or Information is tried.

On Prosecution for private Libel, Defendant entitled to Costs on Acquittal.

IX. And be it enacted, That wherever throughout this Act, in describing the Plaintiff or the Defendant, or the Party affected or intended to be affected by the Offence, Words are used importing the Singular Number or the Masculine Gender only, yet they shall be understood to include several Persons as well as One Person, and Females as well as Males, unless when the Nature of the Provision or the Context of the Act shall exclude such Construction.

Interpretation of Act.

X. And be it enacted, That this Act shall take effect from the First Day of *November* next; and that nothing in this Act contained shall extend to *Scotland*.

Commencement and Extent of Act.

8 & 9 VICT. c. 75.

An Act to amend An Act passed in the Session of Parliament held in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled An Act to amend the Law respecting defamatory Words and Libel. [31st July, 1845.]

WHEREAS by an an Act passed in the Session of Parliament held in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled *An Act to amend the Law respecting defamatory Words and Libel*, it is, amongst other things, enacted and provided, that the Defendant in an Action for a Libel contained in any public Newspaper or other periodical Publication may plead certain Matters therein mentioned, and may upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication of such Libel; and it is thereby further enacted, that such Payment into Court shall be of the same Effect, and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as

6 & 7 Vict. c. 96.

3 & 4 W. 4,
c. 42.

3 & 4 Vict.
c. 105.

In Cases of
Action for
Libel in
Ireland,*
where De-
fendant
shall plead
Matters
allowed by
3 & 4 W. 4,
c. 42, and
pay Money
into Court,
such pay-
ment to be
of same
Effect as if
required
by said
Act.

to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts thereinbefore required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay money into Court, under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for the further Amendment of the Law, and the better Advancement of Justice*: And whereas the said Act of the Fourth Year of the Reign of His late Majesty relates only to Proceedings in the Superior Courts in *England*, but by an Act passed in the Session of Parliament held in the Third and Fourth Years of the Reign of Her present Majesty, intituled *An Act for abolishing Arrest on Mesne Process in Civil Actions; except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for the further Advancement of Justice in Ireland*, a like Provision is made for Payment of Money into Court in all personal Actions pending in any of the Superior Courts in *Ireland*, as is contained in the said Act of the Fourth Year of the Reign of His late Majesty in regard to Actions pending in the Superior Courts in *England*, with a like Exception of Actions for Libel; and it is expedient to prevent any Doubts as to the Application of the said recited Act of the Sixth and Seventh Years of the Reign of Her present Majesty to Actions pending in the Superior Courts in *Ireland*, which may be created by reason of the Omission of a Reference in the last-mentioned Act to the said Act of the Third and Fourth Years of the Reign of Her present Majesty: Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That when in any Action pending in the Superior Courts in *Ireland* for a Libel contained in any public Newspaper or other periodical Publication the Defendant shall plead the Matters allowed to be pleaded by the said first-mentioned Act, and shall on filing such Plea pay Money into Court as provided by such Act, such Payment into Court shall be of the same Effect, and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations now in force or hereafter to be made as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts so required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court under the said recited Act of the Third and Fourth Years of the Reign of Her present Majesty.

II. And be it declared and enacted, That it shall not be competent to any Defendant in such Action, whether in *England* or in *Ireland*, to file any such Plea, without at the same Time making a Payment of Money into Court by way of Amends as provided by said Act, but every such Plea so filed without Payment of Money into Court shall be deemed a Nullity, and may be treated as such by the Plaintiff in the Action.

Defendant not to file such Plea without paying Money into Court by way of Amends.

[Words as "*provided by said Act*" were repealed by 42 & 43 Vict. c. 59 Sched. Part II. and 46 & 47 Vict. c. 49, s. 4.]

32 & 33 VICT. C. 24.

An Act to repeal certain enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Type-founders, and Reading Rooms. [12th July, 1869.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Acts and parts of Acts in first Schedule repealed, except as in second Schedule.

1. The Acts and parts of Acts described in the first schedule to this Act are hereby repealed, but the provisions of the said Acts which are set out in the second schedule to this Act shall continue in force in the same manner as if they were enacted in the body of this Act; and this Act shall not affect the validity or invalidity of anything already done or suffered, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, and all such remedies and proceedings may be had and continued in the same manner as if this Act had not passed.

2. This Act may be cited as The Newspapers, Printers, and Reading Rooms Repeal Act, 1869. Short title.

FIRST SCHEDULE.

Date of Act.	Title of Act, and part repealed.
36 Geo. 3, c. 8 .	An Act for the more effectually preventing seditious meetings and assemblies.
39 Geo. 3, c. 79, in part.	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices. . . . </div> <div style="font-size: 3em; margin: 0 10px;">}</div> <div style="flex: 1;"> In part, namely,—sections fifteen to thirty-three, both inclusive, and so much of sections thirty-four to thirty-nine as relates to the above-mentioned sections. </div> </div>
51 Geo. 3, c. 65 .	An Act to explain and amend an Act passed in the thirty-ninth year of His Majesty's reign, intituled "An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices," so far as respects certain penalties on printers and publishers.
55 Geo. 3, c. 101, in part.	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> An Act to regulate the collection of stamp duties and matters in respect of which licences may be granted by the commissioners of stamps in Ireland . . . </div> <div style="font-size: 3em; margin: 0 10px;">}</div> <div style="flex: 1;"> In part, namely,—Section thirteen. </div> </div>
60 Geo. 3, and 1 Geo. 4, c. 9.	An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels.
11 Geo. 4, and 1 Will. 4, c. 73.	An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual prevention and punishment of blasphemous and seditious libels, as relates to the sentence of banishment for the second offence, and to provide some further remedy against the abuse of publishing libels.

Date of Act.	Title of Act, and part repealed.
6 & 7 Will. 4, c. 76, in part.	<div> <div>An Act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements .</div> <div> In part, namely,— Except sections one to four (both inclusive), sections thirty-four and thirty-five, and the schedule. </div> </div>
2 & 3 Vict. c. 12	An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said Act.
5 & 6 Vict. c. 82, in part.	<div> <div>An Act to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same until the tenth day of October one thousand eight hundred and forty-five . . .</div> <div> In part, namely,— The following words in section twenty "and also licence to any person to keep any printing presses and types for printing in Ireland." </div> </div>
9 & 10 Vict. c. 33, in part.	<div> <div>An Act to amend the laws relating to corresponding societies and the licensing of lecture rooms . . .</div> <div> In part, namely,— So far as it relates to any proceedings under the enactments repealed by this schedule. </div> </div>
16 & 17 Vict. c. 59, in part.	<div> <div>An Act to repeal certain stamp duties and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland . . .</div> <div> In part, namely,— So much of section twenty as make perpetual the provisions of 5 & 6 Vict. c. 82, repealed by this Act. </div> </div>

SECOND SCHEDULE.

The enactments in this schedule, with the exception of sect. 19 of 6 & 7 Will. 4 c. 76, do not apply to Ireland.

39 Geo. 3, c. 79.

Section twenty-eight.

Papers printed by authority of Parliament. Nothing in this Act contained shall extend or be construed to extend to any papers printed by the authority and for the use of either House of Parliament.

Section twenty-nine.

Printers to keep a copy of every paper, and write thereon the name and abode of their employer. Every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit, who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace who within the said space of six calendar months shall require to see the same, shall for every such omission, neglect, or refusal forfeit and lose the sum of twenty pounds.

Penalty of 20*l.* for neglect.

Section thirty-one.

Not to extend to impressions of engravings. Nothing herein contained shall extend to the impression of any engraving, or to the printing by letter-press of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise.

Section thirty-four.

Limitation. No person shall be prosecuted or sued for any penalty imposed by this Act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Part of section thirty-five.

Recovery of penalties. And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewardry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way.

Section thirty-six.

All pecuniary penalties herein-before imposed by this Act shall, when recovered in a summary way before any justice, be applied and disposed of in manner herein-after mentioned; that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to His Majesty, his heirs and successors.

Applica-
tion of
penalties.

51 Geo. 3 c. 65.

Section three.

Nothing in the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, or in this Act contained shall extend or be construed to extend to require the name and residence of the printer to be printed upon any bank note, or bank post bill of the Governor and Company of the Bank of England, upon any bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company authorized or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid shall have been or shall be printed.

Name and
residence
of printers
not re-
quired to
be put to
bank notes,
bills, &c.,
or to any
paper
printed by
authority
of any
public
board or
public
office.

6 & 7 Will. 4. c. 76.

Section nineteen.

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required: provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

Discovery
of proprie-
tors, prin-
ters, or
publishers
of news-
papers may
be enforced
by bill, &c.

2 & 3 Vict. c. 12.

Section two.

Every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print

Penalty
upon
printers

for not printing their name and residence on every paper or book, and on persons publishing the same.

upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, either in the said Act or by any Act made for the amendment thereof.

Section three.

As to books or papers printed at the university presses.

In the case of books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words, "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

Section four.

No actions for penalties to be commenced except in the name of the Attorney or Solicitor General in England or the Queen's Advocate in Scotland.

Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty or forfeiture made or incurred or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney General or Solicitor General in that part of Great Britain called England, or Her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes.

9 & 10 Vict. c. 33.

Section one.

Proceedings shall not be commenced unless in the name of the law officers of the Crown.

It shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine which may hereafter be incurred under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act unless the same be commenced, prosecuted, entered, or filed in the

name of Her Majesty's Attorney General or Solicitor General in England or Her Majesty's Advocate in Scotland, and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes.

44 & 45 VICT. c. 60.

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881.

An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.

[27th August, 1881.]

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel :

And whereas it is also expedient to provide for the registration of newspaper proprietors :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and phrases hereinafter mentioned shall have and include the meanings following ; (that is to say,)

Interpretation.

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorise in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorise in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding

twenty-six days, containing only or principally advertisements.

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Newspaper
reports of
certain
meetings
privileged.

2. *Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.*

[Repealed by sect. 2, Law of Libel Amendment Act, 1888.]

No prosecution for
newspaper
libel without fiat of
Attorney
General.

3. *No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England or Her Majesty's Attorney General in Ireland being first had and obtained.*

[Repealed by sect. 8 of Law of Libel Amendment Act, 1888.]

Inquiry by
court of
summary
jurisdiction as to
libel being
for public
benefit or
being true.

4. *A Court of summary jurisdiction, upon the hearing of a charge against a proprietor, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption*

tion that the jury on the trial would acquit the person charged, may dismiss the case.

5. If a Court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily the Court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Provision as to summary conviction for libel.

Section twenty-seven of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848.

42 & 43
Vict. c. 49.

6. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors."

11 & 12
Vict. c. 43.

7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorise the registration of such newspaper in the name or names of some one or more responsible "representative proprietors."

22 & 23
Vict. c. 17
made applicable to this Act.

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar.

Board of Trade may authorize registration of the names of only a portion of the proprietors of a newspaper. Register of newspaper proprietors to be established. Annual returns to be made.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed; that is to say,

(a.) The title of a newspaper :

(b.) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence.

Penalty for omission to make annual returns.

10. If within the further period of one month after the time herein-before appointed for the making of any return as to any newspaper such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

Power to party to make return.

11. Any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor, or any new proprietor is introduced, may at any time make or cause to be made to the Registry Office a return according to the Schedule B. hereunto annexed and containing the particulars therein set forth.

Penalty for wilful misrepresentation in or omission from return.

12. If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case, every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

Registrar to enter returns in register.

13. It shall be the duty of the registrar and he is hereby required forthwith to register every return made in conformity with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar.

Fees payable for registrar's services.

14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of an entry therein, and in respect of any other services to be performed by the regis-

trar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fees shall be dealt with as the Treasury may direct.

15. Every copy of an entry in or extract from the register of newspaper proprietors purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing, unless and until the contrary thereof be shown.

Copies of entries in and extracts from register to be evidence.

16. All penalties under this Act may be recovered before a Court of Summary Jurisdiction in manner provided by the Summary Jurisdiction Acts.

Recovery of penalties and enforcement of orders.

Summary orders under this Act may be made by a Court of Summary Jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the same manner as if it were re-enacted in this Act.

17. The expression "a Court of Summary Jurisdiction" has in England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts.

Definitions.

The expression "Summary Jurisdiction Acts" has, as regards England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

14 & 15
Vict. c. 93.

18. The provisions as to the registration of newspaper proprietors contained in this Act, shall not apply to the case of any newspaper which belongs to a joint-stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879.

Joint-stock companies.

19. This Act shall not extend to Scotland.

20. This Act may for all purposes be cited as the Newspaper Libel and Registration Act, 1881.

The SCHEDULES to which this Act refers.

SCHEDULE A.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of the Newspaper.	Names of the Proprietors.	Occupations of the Proprietors.	Places of business (if any) of the Proprietors.	Places of Residence of the Proprietors.

SCHEDULE B.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of Persons who become Proprietors.	Occupation of new Proprietors.	Places of business (if any) of new Proprietors.	Places of Residence of new Proprietors.

51 & 52 VICT. c. 64.

(LAW OF LIBEL AMENDMENT ACT, 1888.)

An Act to amend the Law of Libel. [24th December 1888.]

WHEREAS it is expedient to amend the law of libel:

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act the word "newspaper" shall have the same meaning as in the Newspaper Libel and Registration Act, 1881. Interpretation.

2. Section two of the Newspaper Libel and Registration Act, 1881, is hereby repealed. Repeal of 44 & 45 Vict. c. 60, s. 2.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter. Newspaper reports of proceedings in court privileged.

4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged.

a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Consolidation of actions.

5. It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

Power to defendant to give certain evidence in mitigation of damages.

6. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Obscene matter need not be

7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be suffi-

cient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely, by reference to pages, columns, and lines, in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

set forth in indictment or other judicial proceeding.

8. Section three of the forty-fourth and forty-fifth Victoria, chapter sixty, is hereby repealed, and instead thereof be it enacted that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained.

Repeal of 44 & 45 Vict. c. 60, s. 3. Order of Judge required for prosecution of newspaper proprietor, &c.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

Person proceeded against criminally a competent witness.

9. Every person charged with the offence of libel before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge.

10. This Act shall not apply to Scotland.

11. This Act may be cited as the Law of Libel Amendment Act, 1888.

LOTTERIES (ADVERTISEMENTS OF).

4 GEO. 4, c. 60, s. 41.

[1823.]

IF any person or persons shall sell any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances in any lottery or lotteries authorised by any foreign potentate or state, or to be drawn in any foreign country, or in any lottery, or lotteries, except such as are or shall be authorised by this or some other Act of Parliament to be sold, or shall publish any proposal or scheme for the sale of any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances except such lottery or lotteries as shall be authorised as aforesaid, such person or persons shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall also be deemed a rogue and vagabond, or rogues and vagabonds, and shall be punished as such in the manner hereinafter directed.

6 & 7 WILL. 4, c. 66.

An Act to prevent the advertising of Foreign and other Illegal Lotteries. [1835.]

Penalty for
advertising
foreign or
illegal
lotteries,
£50.

WHEREAS the laws in force are insufficient to prevent the advertising of foreign and other illegal lotteries in this kingdom, and it is expedient to make further provision for that purpose: Be it therefore enacted . . . that from and after the passing of this Act, if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or relating to the drawing or intended drawing of any foreign lottery, or of any lottery or lotteries, not authorised by some Act or Acts of Parliament; or if any person shall print or publish, or cause to be printed or published, any advertisement or other notice of or for the sale of any ticket or tickets, chance or chances, or of any share or shares of any ticket or tickets, chance or chances, of or in any such lottery or lotteries as aforesaid, or any advertisement or notice concerning or in any manner relating to any such lottery or lotteries, or any ticket, chance, or share, tickets, chances, or shares thereof or therein; every person so offending shall for every such offence forfeit the sum of fifty pounds, to be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record in Westminster or Dublin respectively, or in the Court of Session in Scotland one moiety thereof to the use of His Majesty, his heirs and successors, and the other moiety thereof to the use of the person who shall inform or sue for the same.

8 & 9 VICT. c. 74, ss. 3, 4.

[1845.]

WHEREAS by an Act passed in the seventh year of His late Majesty King William IV., intituled "An Act to prevent the advertising of foreign and other illegal lotteries," it was enacted that if any person [recital of 6 & 7 Will. 4, c. 66, as above] . . . : and whereas the printers, publishers, and proprietors of divers newspapers have inadvertently printed and published some advertisements or notices of or relating to the matters in the said Act mentioned, or some of them, and many actions, suits, informations, and prosecutions have been brought and commenced against such printers, publishers, and proprietors, or some of them, by persons who sue, inform, or prosecute as well on their own behalf as on

behalf of Her Majesty, to recover various penalties incurred or alleged to have been incurred under the provisions of the said Act; and it is expedient that all further proceedings in such actions, suits, informations, and prosecutions should be prevented, and such other provisions made in relation thereto, and otherwise as is hereinafter mentioned:

* * * * *

3. Be it enacted, that from and after the passing of this Act all fines, penalties, and forfeitures imposed by or incurred or which may be incurred under the said recited Act, shall go and be applied to the use of Her Majesty, her heirs and successors.

4. Provided always, and be it enacted, that from and after the passing of this Act every such fine, penalty, and forfeiture may be sued or prosecuted for, in the name of Her Majesty's Attorney-General, or Solicitor-General in England or Ireland, or of Her Majesty's Advocate General, or Solicitor-General in Scotland, or of the Solicitor of Stamps and Taxes in England or Scotland, or of the Solicitor of Stamps in Ireland, or of any person to be authorised to sue or prosecute for the same by writing under the hands of the Commissioners of Stamps and Taxes, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information, in the Court of Exchequer at Westminster in respect of any fine, penalty, or forfeiture incurred in England, and in the Court of Exchequer in Dublin in respect of any fine, penalty, or forfeiture incurred in Ireland, and in the Court of Exchequer in Scotland in respect of any fine, penalty, or forfeiture incurred in Scotland; and except as is hereinbefore provided it shall not be lawful for any person other than as aforesaid to inform, sue, or prosecute for any such fine, penalty, or forfeiture as aforesaid: Provided always that in no such proceeding as aforesaid shall any essoin, protection, wager at law, nor more than one imparlance, be allowed.

POST OFFICE.

7 WILL. 4, & 1 VICT. c. 36, s. 5.

[1837.]

AND for the prevention of the abuse of the privilege of sending newspapers free by the post, or at a reduced rate, be it enacted, that every person who shall inclose, or cause or procure to be inclosed, in a newspaper to be sent by the post, or under the cover thereof, any letter or paper or thing, and every person who shall print or cause to

Penalty on abuse of privilege as to newspapers.

be printed any words or communication, either upon any such newspaper after the same shall have been published, or upon the cover thereof, or who shall put or cause to be put any writing or marks either upon the newspaper or upon the cover thereof, other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post, or who shall either deliver or tender, in order to be sent by the post, a newspaper in respect of which any one of the offences hereinbefore mentioned shall have been committed, shall for every such offence forfeit treble the duty of the postage computed by weight and by distance, as if the paper in respect of which the offence was committed were a letter, such postage to be recoverable as postages not exceeding in amount twenty pounds, are recoverable; or he shall, except in those cases in which the said newspaper or cover shall only have marks thereon and not writing, at the option of the Postmaster General, be prosecuted as for a misdemeanor, and shall suffer punishment accordingly.

3 & 4 VICT. c. 96, s. 43.

[1840.]

News-
papers
need not be
sent by
post.

AND be it enacted that, although newspapers may be sent by the post it shall not be compulsory to send them by post.

31 & 32 VICTORIA, c. 110 (THE TELEGRAPH ACT, 1868),
ss. 16 & 23.

Power to
Postmaster
General to
enter into
special
agreements
with pro-
prietors of
news-
papers.

16. Notwithstanding anything in the Act, it shall be lawful for the Postmaster General, with the Consent of the Commissioners of Her Majesty's Treasury, from time to time to make contracts, agreements and arrangements with the Proprietor or Publisher of any public registered Newspaper, or the Proprietor or Occupier of any News Room, Club, or Exchange Room, for the transmission and delivery, or the transmission or delivery of telegraphic communications at rates not exceeding one shilling for every hundred words transmitted between the hours of six p.m. and nine a.m., and at rates not exceeding one shilling for every seventy-five words transmitted between the hours of nine a.m. and six p.m. to a single address, with an additional charge of twopence for every hundred words, or twopence for every

seventy-five words, as the case may be, of the same telegraphic communication so transmitted to every additional address: Provided always, that the Postmaster General may, from time to time, with the like Consent, let to any such Proprietor, Publisher, or Occupier the special use of a wire (during such period of twelve hours *per diem* as may be agreed on) for the purposes of such Newspaper, News Room, Club or Exchange Room, at a rate not exceeding five hundred pounds *per annum*: Provided also, that no such Proprietor, Publisher, or Occupier shall have any undue priority or preference in respect of such rates over any other such Proprietor, Publisher, or Occupier.

23. Copies of all contracts, agreements, and arrangements from time to time made under the authority of this Act, shall be laid before both Houses of Parliament within fourteen days of the commencement of the Session next succeeding the making of every such contract, agreement, and arrangement;

33 & 34 VICT. c. 79.

An Act for further regulation of Duties of Postage, and for other purposes relating to the Post Office.

[9th August 1870.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Post Office Act, 1870.
2. In this Act—

Short title.

"The Treasury" means the Commissioners of Her Majesty's Treasury or two of them:

Interpretation of terms.

"Treasury warrant" means a warrant under the hands of the Treasury:

"The Postmaster General" means Her Majesty's Postmaster General:

"Post Office regulations" means regulations made by the Postmaster General.

3. For the purposes of this Act, the Channel Islands and the Isle of Man shall be deemed parts of the United Kingdom.

Channel Islands and Isle of Man.

4. The enactments described in the first schedule to this Act shall, from and immediately after the thirtieth day of September one thousand eight hundred and seventy, be repealed; but that repeal shall not affect the past operation

Repeal and limitation of enactments.

of any of those enactments, or the force or operation of any Treasury warrant or Post Office regulations made, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before that repeal takes effect; nor shall this Act interfere with the prosecution or institution of any proceeding in respect of any right, title, obligation, or liability accrued under, or any offence committed against, or any penalty or forfeiture incurred under, any of those enactments before that repeal takes effect; and section four of and schedule (A.) to the Act first described in the first schedule to this Act, or either of them, shall not be deemed to contain or affect the definition of a newspaper for the purposes of this Act or of any other enactment regulating the sending of newspapers by post.

Allowance
for news-
paper
stamps on
hand.

5. Where any person is possessed of any newspaper stamps made useless by this Act, the Commissioners of Inland Revenue, on application within six months after the thirtieth day of September, one thousand eight hundred and seventy, may cancel and make allowance for the same as in case of spoiled stamps.

Certain
publica-
tions to be
deemed
news-
papers.

6. Any publication coming within the following description shall for the purposes of this Act be deemed a newspaper, (that is to say,) any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements; subject to these conditions—

That it be printed and published in the United Kingdom;

That it be published in numbers at intervals of not more than seven days;

That it be printed on a sheet or sheets unstitched;

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

[*The words in italics were repealed by 44 & 45 Vict. c. 19.*]

And the following shall, for the purposes of this Act, be deemed a supplement to a newspaper, (that is to say,) a publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, printed on a sheet or sheets or a piece or pieces of paper, unstitched, or consisting wholly or in part of engravings, prints, or lithographs illustrative of articles in the newspaper; such publication in every case being published with the newspaper, and having the title and date of publication of the newspaper printed at the top of every page, or at the top of every sheet or

side on which any such engraving, print, or lithograph appears.

7. The proprietor or printer of any newspaper within the description aforesaid, and the proprietor or printer of any publication which, regard being had to the proportion of advertisements to other matter therein, is not within the description aforesaid, but which was stamped as a newspaper before the passing of the Act lastly mentioned in the first schedule to this Act, may register it at the General Post Office in London, at such time in each year and in such form and with such particulars as the Postmaster General from time to time directs, paying on each registration such fee not exceeding five shillings as the Postmaster General, with the approval of the Treasury, from time to time directs.

Registration of newspapers at Post Office.

The Postmaster General may from time to time revise the register and remove therefrom any publication not being a newspaper.

The decision of the Postmaster General on the admission to or removal from the register of a publication shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Any publication for the time being on the register shall for the purposes of this Act be deemed a registered newspaper.

8. From and after the thirtieth day of September one thousand eight hundred and seventy, registered newspapers, book packets, pattern or sample packets, and post cards, may be sent by post between places in the United Kingdom, at the following rates of postage:—

Postage on newspapers, book and pattern or sample packets, and cards.

On a registered newspaper, with or without a supplement or supplements . . . One halfpenny.

On each registered newspaper in a packet of two or more, with or without a supplement or supplements . . . One halfpenny.

On a book packet or pattern or sample packet:—

If not exceeding two ounces in weight . . . One halfpenny.

If exceeding two ounces in weight, for the first two ounces and for every additional two ounces or fractional part of two ounces . . . One halfpenny.

On a post card . . . One halfpenny.

Provided that a packet of two or more registered newspapers with or without a supplement or supplements shall not be liable under this section to a higher rate of postage

than the rate chargeable on a book packet of the same weight.

Post Office
regulations.

9. The Postmaster General may from time to time, with the approval of the Treasury, make, in relation respectively to registered newspapers, book packets, pattern or sample packets, and post cards, sent by post, such regulations as he thinks fit, for all or any of the following purposes:—

For prescribing and regulating the times and modes of posting and delivery:

For prescribing prepayment and regulating the mode thereof:

For regulating the affixing of postage stamps:

For prescribing and regulating the payment again of postage in case of re-direction:

For regulating dimensions and maximum weight of packets:

For regulating the nature and form of covers:

For prohibiting or restricting the printing or writing of marks or communications or words:

For prohibiting inclosures;

and such other regulations as from time to time seem expedient for the better execution of this Act.

Saving
for parliamentary
proceedings.

10. Nothing in this Act or in any Treasury warrant or Post Office regulations shall repeal or alter any provision of sections 13, 16, or 17 of the Act secondly described in the first schedule to this Act as far as those sections relate to printed votes or proceedings of Parliament addressed to places in the United Kingdom.

News-
papers
under
convention.

11. A registered newspaper shall be deemed a newspaper for the purposes of any arrangement or convention between Her Majesty's Government and any colonial or foreign government for securing advantages for newspapers sent by post.

Colonial
and
foreign
postage
of news-
papers.

12. The Treasury may from time to time, by Treasury warrant, allow any newspapers, British, colonial, or foreign, to be sent by post between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, at such rates of postage, not exceeding threepence for each newspaper irrespectively of any colonial or foreign postage, and on such conditions as they think fit, and according to Post Office regulations to be from time to time made in that behalf.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

13. The Treasury from time to time, by Treasury warrant, may regulate the sending of book packets and pattern or sample packets by post, between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, and in relation thereto may prescribe rates of postage, weights, and other matters.

Colonial
and
foreign
book, &c.,
post.

Any Treasury warrant and Post Office regulations made in that behalf before the passing of this Act are hereby confirmed; and the same shall continue in force unless and until altered by Treasury warrant or Post Office regulations (as the case may be).

14. If a question arises whether any publication, not being a registered newspaper, is a newspaper or a supplement, or whether any packet is a book packet or pattern or sample packet, within this Act or any Treasury warrant, or Post Office regulations, the decision thereon of the Postmaster General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Decision as
to news-
papers,
packets,
&c.

15. If any registered or other newspaper, supplement, publication, book packet, pattern, or sample packet, or post card, is sent by post otherwise than in conformity with this Act or any Treasury warrant or Post Office regulations, it shall be either returned to the sender thereof or forwarded to its destination in either case charged with such rate of postage not exceeding the letter rate of postage, or without any additional charge, as the Postmaster General, with the approval of the Treasury, from time to time directs, having been, if necessary, detained and opened in the Post Office.

News-
papers,
&c., sent
not in con-
formity
with Act,
&c.

16. A book packet, pattern or sample packet, or post card sent by post shall be deemed a post letter, within the Act described in the second schedule to this Act.

Book
packets,
&c.

17. Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book packets, pattern or sample packets, and post cards, or any of them, the same or any of them may, subject and according to Post Office regulations, be detained in the Post Office until the despatch or delivery next following that by which they would ordinarily be despatched or delivered.

Despatch
and
delivery of
book
packets,
&c.

18. The Commissioners of Inland Revenue shall from time to time provide proper dies and other implements for denoting by adhesive or embossed or impressed stamps or otherwise the duties of postage payable in the United Kingdom under this Act or any Treasury warrant thereunder.

Provision
for
stamps,
&c.

Those duties shall be deemed stamp duties, and shall be under the management of the Commissioners of Inland Revenue.

So much of the Act secondly described in the first schedule to this Act as relates to stamp duties under that Act shall apply to the stamp duties under this Act.

A newspaper or packet sent by post and the cover thereof (if any) shall be deemed a letter or cover (as the case may be) within section twenty-three of the Act secondly described in the first schedule to this Act; and a post card shall be deemed a letter within that section, and the duties under this Act shall be deemed to be comprised in the duties in that section referred to.

Prohibition of user of embossed or impressed stamps removed from paper, &c.

19. It shall not be lawful for any person to affix to a letter, newspaper, supplement, publication, packet or card sent by post or to the cover thereof (if any), by way of prepayment of postage thereon, an embossed or impressed stamp cut out or otherwise separated from the cover or other paper, card, or thing on which such stamp was embossed or impressed, although such stamp has not been before sent by post or used.

If any letter, newspaper, supplement, publication, packet, or card is sent by post with a stamp affixed thereto or to the cover thereof (if any) that has been so cut out or separated, the postage thereof as far as it purports to be prepaid by that stamp shall be deemed to be not prepaid.

Prohibition of sending indecent articles, &c., by post.

20. The Postmaster General may from time to time with the approval of the Treasury make such regulations as he thinks fit for preventing the sending or delivery by post of indecent or obscene prints, paintings, photographs, lithographs, engravings, books, or cards, or of other indecent or obscene articles, or of letters, newspapers, supplements, publications, packets, or post cards, having thereon, or on the covers thereof, any words, marks, or designs of an indecent, obscene, libellous, or grossly offensive character.

Proof of Post Office regulations, &c.

21. The Documentary Evidence Act, 1868, shall have effect as if the Postmaster General were mentioned in the first column, and any Secretary or Assistant Secretary of the Post Office were mentioned in the second column, of the schedule to that Act; and any approval of the Treasury under this Act shall be deemed an order within that Act.

SCHEDULES.

THE FIRST SCHEDULE.

Enactments repealed.

- | | | |
|-----------------------------------|--|---------------------|
| 6 & 7 Will. 4,
c. 76, in part. | An Act to reduce the duties
on newspapers, and to
amend the laws relating
to the duties on news-
papers and advertisements
Sections one to three (both inclusive), and
sections thirty-four and thirty-five. | } in part; namely,— |
| 3 & 4 Vict. c. 96,
in part. | An Act for the regulation of
the duties of postage
Section eleven; sections thirteen, sixteen, and
seventeen, as far as those three sections
relate to printed votes or proceedings of
Parliament, addressed to places out of the
United Kingdom, or to newspapers; sec-
tion forty-two; sections forty-four, forty-
five, and forty-six, as far as those three
sections relate to newspapers; and sections
forty-seven to fifty-one (both inclusive). | } in part; namely,— |
| 11 & 12 Vict. c.
117. | An Act for rendering certain newspapers published
in the Channel Islands and the Isle of Man
liable to postage. | |
| 16 & 17 Vict. c. 63,
in part. | An Act to repeal certain
stamp duties, and to grant
others in lieu thereof, to
give relief with respect to
the stamp duties on news-
papers and supplements
thereto, to repeal the duty
on advertisements, and
otherwise to amend the
laws relating to stamp
duties
Sections three and four. | } in part; namely,— |
| 18 & 19 Vict. c. 27. | An Act to amend the laws relating to the stamp
duties on newspapers, and to provide for the
transmission by post of printed periodical
publications. | |

THE SECOND SCHEDULE.

Act referred to.

7 Will. 4 and 1 Vict. c. 36.—An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.

38 VICT. c. 22, ss. 1 & 5.

An Act for the further regulation of the Duties on Postage, and for other purposes relating to the Post Office.

[14th June, 1875.]

Power of
Treasury
by warrant
to fix the
rates of
postage.

1. The Treasury may from time to time by warrant fix the rates of postage or other sums to be charged by or under the authority of the Postmaster General in respect of postal packets, or any description thereof, conveyed or delivered for conveyance by post, whether in the United Kingdom or elsewhere, or liable under the Acts mentioned in Part Two of the schedule to this Act to be charged with rates of postage or other sums, and regulate the scale of weights and the circumstances according to which such rates or sums are to be charged, and the power of the Postmaster General, with or without the consent of the Treasury, to remit any such rates or sums: Provided that—

- (1.) The lowest rate of postage for an inland letter shall not be less than one penny; and
- (2.) The highest rate of postage when prepaid—
 - (a.) For an inland post card shall not exceed one halfpenny; and
 - (b.) For an inland book packet shall not exceed one halfpenny for every two ounces in weight, or for any fractional part of two ounces over and above the first or any additional two ounces; and
 - (c.) For each inland registered newspaper, whether with or without a supplement or supplements, and whether single or in a packet of two or more, shall not exceed one halfpenny; but
 - (d.) The prepaid postage for an inland packet of two or more registered newspapers, with or without a supplement or supplements, shall

not exceed the prepaid postage for an inland book packet of the same weight ; and

- (3.) The highest rate of prepaid postage on a single newspaper sent by post between the United Kingdom and places out of the United Kingdom, or between places out of the United Kingdom, whether through the United Kingdom or not, shall not exceed three-pence, exclusive of any additional charge made by any of Her Majesty's colonies or any foreign country.

A warrant under this section may, subject to the limitations above contained, revoke and alter any existing rate of postage or other sums and any existing warrant and regulations made under any of the Acts mentioned in Part Two of the schedule to this Act, but so far as it does not revoke or alter the same any existing rate of postage or sum may continue to be charged, and any such existing warrant or regulations shall continue in force.

5. If any question arises whether any postal packet is a letter, post card, newspaper, supplement, book packet, circular, or other description of postal packet within the meaning of this Act, or any warrant made under this Act, the decision thereon of the Postmaster General shall be final, save that the Treasury may, if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly.

Decision as to postal packets.

44 & 45 VICT. c. 19.

An Act for further regulating the transmission of Newspapers.

[18th July 1881.]

1. For the purposes of this Act the Channel Islands and the Isle of Man shall be deemed parts of the United Kingdom.

2. From and after the thirtieth day of September one thousand eight hundred and eighty-one, so much of section six of the Post Office Act, 1870, as requires that a publication in order to be a newspaper for the purposes of that Act, shall be printed on a sheet or sheets unstitched, shall be repealed, but such repeal shall not extend to a supplement to a newspaper.

For purposes of Act Channel Islands and Isle of Man part of United Kingdom. Repeal of part of sect. 6 of 33 & 34 Vict. c. 79

STOLEN GOODS (ADVERTISEMENTS FOR).

24 & 25 VICT. c. 96 (LARCENY ACT, 1861), s. 102.

Advertis-
ing a
reward for
the return
of stolen
property,
&c.

Whoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt to be recovered with full costs of suit.

33 & 34 VICT. c. 65 (THE LARCENY (ADVERTISEMENT) ACT, 1870), ss. 2, 3.

Definition
of "news-
paper."

2. In this Act the term "newspaper" means a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post.

Limitation
of actions
for ad-
vertise-
ments of
rewards
for return
of stolen
property.

3. Every action against the printer or publisher of a newspaper to recover a forfeiture under section one hundred and two of the Larceny Act, 1861, shall be brought within six months after the forfeiture is incurred, and no such action against the printer or publisher of a newspaper shall be brought unless the assent in writing of Her Majesty's Attorney General or Solicitor General for England, if the action be brought in England, or for Ireland, if the action is brought in Ireland, has been first obtained to the bringing of such action.

INDEX.

ACCIDENT INSURANCE COUPONS, 22

"ACCORD AND SATISFACTION," 155. *See* LIBEL.

ADVERTISEMENTS, 16-28

may be libellous, 16

indemnity for illegal advertisements invalid, 17, 27

lottery advertisements, 17-19

prize competitions, 18

betting advertisements, 19

stolen property ("no questions asked"), 21

accident insurance coupons, 22-25

indecent advertisements, 25

right to reject advertisements, 25

ANONYMOUS CONTRIBUTIONS, alterations in, 75. *See* EDITOR.

APOLOGY "AT EARLIEST OPPORTUNITY," 156. *See* LIBEL.

ART UNION LOTTERIES, 18

ASSIGNMENT OF TITLE, 63

AUTHOR,

responsibility for libel, 87

" " in French law, 210

name need not be disclosed, 87, 146, 152

payment of, 43. *See* COPYRIGHT.

AUTHOR'S COPYRIGHT IN ARTICLES,

nature and duration of, 51

reservation by agreement, 52

BANKRUPTCY OF REGISTERED OWNER, 7

BETTING ADVERTISEMENTS, 19

BLASPHEMOUS LIBEL, 177

- BOARD OF GUARDIANS, fair and accurate report privileged, 111
- CAMPBELL'S (LORD) ACTS, 156, 157, 170, 175, 177, 193. *See* LIBEL.
text of. *See* APPENDIX.
- CERTIORARI (removal of trial), 193. *See* LIBEL.
- COMMENTS ON FACTS, FAIR AND BONÂ FIDE, 122. *See* LIBEL, PRIVILEGE, CRITICISM.
- "COMMON INFORMER," 6, 18, 22
- COMMON LAW COPYRIGHT. *See* COPYRIGHT.
- COMPOSITORS, responsibility of, 89, 169. *See* LIBEL.
- COMPULSORY RECTIFICATION ("reasonable correction"), 115
in France, 207
in Germany, 214
in Hungary, 218
- "CONFESSION AND AMENDS, 155. *See* LIBEL.
- CONSOLIDATION OF ACTIONS, 143-4. *See* LIBEL.
- CONTEMPT OF COURT, 182-5, 195
parliament, 182
- COPIES OF NEWSPAPERS,
to be preserved for six months, 9
to be delivered to British Museum, &c., 11
- COPYRIGHT,
definition of copyright, 29
no prospective copyright, 30
originality essential for copyright, 31
in a summary, 31
in a digest, 31
in extracts, 31
in telegrams and news, 32
in reports, 33
no copyright in a libel, 34
fraud destroys copyright, 34
no copyright in the title of a newspaper, 60
- COMMON LAW COPYRIGHT,
copyright before publication, 35
special publication, 35
letters to editor, 36
lectures, republication of, 36-39
university and foundation lectures, 37-39
sermons, republication of, 38

COPYRIGHT—*continued.*

STATUTORY COPYRIGHT,

- First Copyright Act, 39
- perpetual copyright, 40
- “publication,” definition of, 40
- international copyright, 40
- duration of copyright, 40
- copyright in illustrations, 41
- newspaper proprietor's copyright, 41
- depends on agreement with writer, 41
- and payment of writer, 43
- actual payment necessary, 44
- registration necessary to secure a remedy, 45
- method of registration, 46
- registration of a newspaper, 46–50
- duration and nature of proprietor's copyright, 50
- author's copyright, 51

PIRACY,

- definition of, 52
- by quotation, 53
- of substance, 54
- of news and telegrams, 56

CORPORATION. *See* **LIBEL.**

- can sue for slander of title, 93
- but not for libel, 93
- may be sued for libel, 93

COSTS IN A LIBEL ACTION, 144, 164, 189

COUNTY COURT (remittal of action), 141–143. *See* **LIBEL.**

CRIME, incitements to, 182
in French law, 209

CRIMINAL LIBEL, 168–196. *See* **LIBEL.**

CRITICISM,

- fair criticism no libel, 122
- of public officers, 124
- of private enterprises, 125
- of books and plays, 126. *See* **LIBEL.**

DAMAGES, excessive, 161
aggravation of, 161. *See* **LIBEL.**

DEAD, libel on the, 174, 187
(New York), 82
(French law), 211

EDITOR,

- letters to, 36, 71
- contracts with proprietor, 68

EDITOR—continued.

- "notice" and dismissal, 69
- a yearly servant, 70
- measure of damages for breach of agreement, 71
- position and powers of, 72
- scope of authority, 72
- custody of manuscripts, 74
- no property in MSS. or letters, 73
- right to alter MSS., 74-77
- bound to publish reply (France), 77, 207
- (Germany), 77, 214
- responsibility for libel, 85, 86. *See* LIBEL.
- not bound to disclose writer's name, 87, 146, 152
- no legal definition of editor, 88
- first mentioned in Libel and Registration Act, 176
- must insert "reasonable correction," 115
- statements to, not privileged, 122
- in France, position and duties of, 207, 212
- in Germany, position and duties of, 214-216

EX PARTE APPLICATIONS PRIVILEGED, 109-10. *See* PRIVILEGE.

EXTRACTS, copyright in, 31. *See* COPYRIGHT.

"FAIR AND ACCURATE" REPORT, when privileged, 106-122

FEEES,

- for registration (Registration Act), 8
- "representative proprietor," 9
- for registration (Post Office Act), 13
- " " Copyright, 232

FOX'S LIBEL ACT, 172

text, *See* Appendix.

FRAUD OR MISREPRESENTATION DESTROYS COPYRIGHT,
34

HEADINGS NOT PRIVILEGED, 120

HUSBAND AND WIFE, evidence of, in trial for libel, 193

IMPRINT, 10

IMPUTATIONS ON PRIVATE CHARACTER, 94, 131
in French law, 204, 209

INDEMNITY AGAINST PENALTIES INVALID, 27

INDICTMENT, proceedings by, 187

INFORMATION, proceedings by, 187-189

INJUNCTION TO PREVENT LIBEL, 164-167

"INNUENDO," 99, 135

INQUIRY BEFORE MAGISTRATE, 176, 190-192. *See* LIBEL.

INTERROGATORIES, 145-154. *See* LIBEL.

INTERRUPTIONS MAY BE LIBELLOUS, 116

"INTERVIEWING" AS A METHOD OF LIBEL, 87

IRELAND EXEMPT FROM CERTAIN STATUTES, 10, 11

JOINT OWNERSHIP OF NEWSPAPER, 65-68

JUDGE AND JURY, relative functions of, 100. *See* LIBEL.

JUDGE'S CHARGE, report of, privileged, 118

JUDICIAL PROCEEDINGS, 108-111. *See* PRIVILEGE.

JUSTIFICATION,

 "True in substance and in fact," 131

 partial justification, 132

 strict proof required, 132

 proving the "innuendo," 135

 separable charges, 136

 in criminal cases, 175

 "truth" and "public benefit," 175

LETTERS TO EDITOR, 36, 71

 "reasonable contradiction," 115

LECTURES, right to publish, 36-39

LIBEL, 79-194

 difficulty of definition, 79

 various kinds of libel, 80

 defamatory libel, defined, 81

LIBEL AS A CIVIL INQUIRY, 83-167

 necessary conditions, 83

 must be published, 84

 who is responsible for publication, 85

 responsibility of proprietor, printer, and publisher, 86

 responsibility of editor, author, and vendor, 86. *See* EDITOR,

 AUTHOR.

 "interviewing" as method of libel, 87

 responsibility of sub-editor, compositor, and "reader," 89-92

 actual malice not necessary, 92. *See* MALICE.

LIBEL—*continued.*

- a corporation liable for libel, 93
- cannot sue for libel, 93
- meaning of writer, 93
- imputation on character, 94
- ordinary meaning of words, 95
- words must certainly apply to plaintiff, 98
- "innuendo" must be proved, 99
- functions of judge and jury, 100
- malice presumed from the facts, 102
- absolute privilege, 103
- partial privilege, 105
- express malice necessary to rebut, 105
- statements of facts, 106
- Parliamentary reports, 106
- judicial reports, 108-111
- ex parte* applications, 109
- public meetings, &c., 111-122
- bonâ fide* and for a lawful purpose, 114
- interruptions at meetings, 116
- "fair and accurate," 118
- libellous headings, 120
- statements to reporters, 122
- fair comment on facts no libel, 123
- criticism of books and plays, 124. *See* CRITICISM.
- meaning of "fair comment," 126
- mixed comment and statement of facts, 127-131
- attacks on private character, 130
- truth as a defence, 131. *See* JUSTIFICATION.
- slander of title, 137
- scandalum magnatum*, 140

CIVIL PROCEDURE,

- action must be brought in High Court, 141
- remittal to County Court, 141-143
- consolidation of actions, 143
- apportionment of costs, 144
- particulars of charges, 145
- interrogatories, 145-154
- defences, 154
- release by plaintiff, 154
- accord and satisfaction, 155
- confession and amends, 155
- Lord Campbell's Act, 156
- apology "at earliest opportunity," 156
- payment into Court, 156
- res judicata*, 157-160
- Statutes of Limitation, 160
- damages, excessive, 160
 - aggravation, 161
 - mitigation, 162
- libel by quotation, 163
- previous action for same libel, 163

LIBEL—continued.

CIVIL PROCEDURE,

- costs, 164
- injunction to restrain, 164

LIBEL AS A CRIMINAL OFFENCE, 168-196

- "breach of the peace," 169
- classes of criminal libel, 169
- responsibility (Lord Campbell's Act), 169-173
- Fox's Act, 172
- no joint responsibility, 173
- publication (limited), 173
- libel on the dead, 174
- privilege and justification, 174
- "the greater the truth the greater the libel," 175
- summary jurisdiction, 176
- "disorderly libels," 176
- blasphemous libel, 177
- obscene libel, 178
- sedition libel, 180
- contempt of Parliament, 182
- of Court, 182-184
- "Superior Courts of Record," 182
- threats to publish, 184
- illegal practice at elections, 185

CRIMINAL PROCEDURE

- criminal information, 187
 - by Attorney-General, 187
 - by private "relator," 187-9
- indictment, 189
- inquiry before magistrate, 190
- summary dismissal of case, 191
- "bound over" (Vexatious Indictments Act), 191
- summary conviction, 192
- returned for trial, 192
- removal to Queen's Bench Division (certiorari), 193
- plea of not guilty, 193
- plea of justification, 193
- evidence of prisoner and husband or wife, 193
- punishment, defamatory libel, 194
 - blasphemous libel, 194
 - obscene libel, 194
- summary conviction for, 195
- appeal to quarter sessions, 195
- contempt, no appeal, 195

LIBEL, no copyright in, 34

LIMITATION, STATUTES OF, 160. See LIBEL.

- in French law, 213
- in German law, 216

LOCAL BOARD OR AUTHORITY, fair and accurate account of, 111

LOTTERIES, 17-19. See ADVERTISEMENTS.

"MALICE,"

(legal) meaning of, 92, 93, 102. *See* LIBEL
 (express) destroys privilege, 111, 115
 in slander of title, 138-140
 (*l'intention de nuire*) in French law, 210
 (*dolus*) in German law, 215

MANUSCRIPTS,

property in, 73
 responsibility for loss, 74
 editor's right to alter, 74. *See* EDITOR.

MEETINGS, 111-122. *See* PUBLIC MEETINGS.

MIXED COMMENT AND STATEMENT OF FACTS, 127

MORTGAGE OF NEWSPAPER, 64

MULTIPLICATION OF LIBEL, 144, 146, 162

NEWS, copyright in, 33. *See* COPYRIGHT.

NEWSPAPER

definition of: Libel and Registration Act, 2, 109, 163

Post Office Act, 12, 22

Lord Campbell's Act, 156

French law, 206

German law, 214

Newspaper a "book" for copyright purposes, 40. *See* COPYRIGHT.

registration of, 3-9

for postage, 12, 13

for copyright, 45-50

in France, 4, 206

no copyright in title, 60

mortgage of, 64

joint ownership of, 65

partnership disputes, 66, 67

use of premises and type, 67

OBSCENE LIBEL, 178, 195

OFFICIAL NOTICES PRIVILEGED, 113

PARLIAMENT, CONTEMPT OF, 182

PARLIAMENTARY REPORTS PRIVILEGED, 106. *See* PRIVILEGE.

PARTICULARS, 145, 162. *See* LIBEL.

PAYMENT INTO COURT (Lord Campbell's Act), 157. *See* LIBEL.

PENALTIES,

- non-registration (£25), 5
- misleading registration (£100), 5
- summary recovery of, 6, 7, 9
- non-preservation of copies (£20), 10
- omission of "imprint" (£5 for each copy), 10
- non-delivery of copies at British Museum, &c. (£5), 11
- lottery advertisement (£50), 17
- betting advertisement (£30 or imprisonment), 20
- stolen property advertisement ("no questions asked") (£50), 21
- unauthorised "accident coupon" (£20), 22
- illegal practice at elections (£100), 186

PIRACY. *See* COPYRIGHT.

POST OFFICE REGULATIONS, 12-15

PRINTER,

- must register newspaper, 3-5
- must preserve copies, 9
- responsibility for libel. *See* LIBEL.

PRIVILEGE. *See* LIBEL.

- absolute privilege, 103
- partial privilege, 105
- nature of, 105
- statements of fact, 106
- reports of proceedings in Parliament, 106
- reports of judicial proceedings, 108
- ex parte* applications, 109
- other public proceedings, 111
- official notices, 113
- meetings of public bodies, 113
- public meetings, 114
- conditions of privilege,
 - absence of malice, 115
 - must insert "reasonable correction," 115
 - report must be of "public concern" and for "public benefit," 116
 - must be "fair and accurate," 118
- headings of reports not privileged, 120
- comments on facts (*quasi* privilege), 122
- in criminal cases, 174. *See* CRITICISM.
- "faithful and *bonâ fide*" reports privileged in France, 212

PRIZE COMPETITIONS, when illegal, 18

PROPRIETOR.

- proprietor "may" register (Registration Act), 4
- change of, 4, 7
- definition of, 8
- "representative proprietors," 8
- "proprietor or printer" must register (Post Office Act), 12
- proprietor's copyright in articles, 41-51. *See* COPYRIGHT.

PROPRIETOR—continued.

- joint ownership, 65-68. *See* NEWSPAPER.
- contracts with third parties, 68-71
- contracts with staff, 68, 69
- "notice" and dismissal, 69-71
- measure of damages for breach of contract, 71. *See* EDITOR.
- responsibility for libel, 86. *See* LIBEL.

PUBLICATION. *See* LECTURES; SERMONS.

- publication essential for statutory copyright, 40. *See* COPYRIGHT.
- responsibility for publication of a libel, 86, 173. *See* LIBEL.
- publication of blasphemous or indecent matter absolutely forbidden, 108, 111
- publication of reports may be forbidden (French law), 212

"PUBLICATIONS" which are not newspapers, 2**"PUBLIC CONCERN" and "PUBLIC BENEFIT," 116, 117, 125.**
See CRITICISM.**PUBLIC MEETINGS, &c., reports of, 114**

- must be "fair and accurate," 118
- "*bonâ fide* held for a lawful purpose," 114. *See* PRIVILEGE.

PUBLISHER, responsibility for libel, 86. *See* LIBEL.**QUARTER SESSIONS, appeal to, 195****QUOTATION, piracy by, 53. *See* COPYRIGHT.**
libel by, 163. *See* LIBEL.**"READER," responsibility for libel, 89. *See* LIBEL.****"REASONABLE CONTRADICTION OR EXPLANATION," 115****REGISTRATION. *See* NEWSPAPER.**

- under Newspaper Libel and Registration Act, 1881, 1
 - time and place of registration, 3
 - who may register, 4, 5
 - non-registration, penalty for, 5
 - misleading registration, penalty for, 5
 - false return endangers property, 6
 - neglect to register, 7
 - bankruptcy of registered owner, 7
 - fees for registration, 9
 - certified copy of register, 9
- under Post Office Act, 1870, 12
 - for foreign postage, 14
- Copyright Act, 1842, 45-50

RELEASE BY PLAINTIFF, 154. *See* LIBEL.

REPORTS, copyright in, 33. *See* COPYRIGHT.

REPORTS AND PROCEEDINGS OF PARLIAMENT, 103

REPORTS, PRIVILEGED (civil law), 106-122
(criminal law), 174

See also OFFICIAL NOTICES, PRIVILEGE, PUBLIC BODIES.

RES JUDICATA, 157-160. *See* LIBEL.

RESPONSIBILITY OF REGISTERED PROPRIETOR, 7
for "civil" libel, 86, 91
for criminal libel, 169-173. *See* LIBEL.

SCANDALUM MAGNATUM, 140

SCHOOL BOARD, "fair and accurate" report, 111

SEDITIONOUS LIBEL, 180

SEIZURE OF PAPERS, 179, 195
in Germany, 217
in Austria, 217

SIGNED ARTICLES, 76
in France, 205

SLANDER OF TITLE, 137
falsehood and "special damage," 137
malice, 138
corporation may sue for, 93

STATUTES REFERRED TO,
4 & 5 Wm. & Mary, c. 18 (*Criminal Information*), 187
8 Anne, c. 16 (*Copyright*), 39
23 & 24 Geo. 3, c. 28 (*Registration, Ireland*), 10
32 Geo. 3, c. 60 (*Fox's Act*), 172
36 Geo. 3, c. 7 (*Treason*), 180
38 Geo. 3, c. 78 (*Registration*), 1
39 Geo. 3, c. 79 (*Preserving Copies*), 9
57 Geo. 3, c. 6 (*Treason*), 180
60 Geo. 3, c. 8 (*Seditious Libel*), 180
4 Geo. 4, c. 60 (*Lotteries*), 17
5 Geo. 4, c. 83 (*Obscene Libel*), 195
5 & 6 Will. 4, c. 65 (*Lectures*), 36
6 & 7 Will. 4, c. 66 (*Lotteries*), 17
c. 76 (*Disclosure*), 10, 11, 155
7 Will. 4, & 1 Vict. c. 36 (*Post Office Act*), 14
2 & 3 Vict. c. 12 (*Imprint*), 10
3 & 4 Vict. c. 9 (*Privilege of Parliament*), 104, 107
5 & 6 Vict. c. 45 (*Copyright*), 11, 39-52

STATUTES REFERRED TO—*continued.*

- 6 & 7 Vict. c. 96 (*Lord Campbell's Act*), 156, 170, 175, 177, 184, 193, 194, text, *see* Appendix.
 7 Vict. c. 12 (*International Copyright*), 40
 8 & 9 Vict. c. 74 (*Intervention of Law Officers*), 18
 ——— c. 75 (*Lord Campbell's Act, Amendment*), 156
 9 & 10 Vict. c. 33 (*Intervention of Attorney-General*), 10
 ——— c. 48 (*Art Union Lotteries*), 18
 10 & 11 Vict. c. 95 (*International Copyright*), 40
 11 & 12 Vict. c. 12 (*Treason Felony*), 180
 14 & 15 Vict. c. 100 (*Obscene Libel*), 194
 15 Vict. c. 12 (*International Copyright*), 40
 16 & 17 Vict. c. 119 (*Betting Advertisements*), 20
 20 & 21 Vict. c. 38 (*Obscene Libels*), 195
 24 & 25 Vict. c. 96 (*Larceny, Threats*), 21, 185
 30 & 31 Vict. c. 85 (*Vexatious Indictments*), 191
 31 & 32 Vict. c. 110 (*Telegraph Act*), 14
 32 & 33 Vict. c. 24 (*Repeal Consolidation*), 1, 9, 10, 152
 33 & 34 Vict. c. 65 (*Stolen Goods*), 22
 ——— c. 79 (*Post Office Act*), 12-15, text, *see* Appendix.
 ——— c. 97 (*Stamp Act*), 22
 ——— c. 99 (*Repeal, &c.*), 155
 37 Vict. c. 15 (*Betting Advertisements*), 20
 38 Vict. c. 12 (*International Copyright*), 40
 38 & 39 Vict. c. 22 (*Post Office Act*), 15
 44 & 45 Vict. c. 19 (*Post Office Act*), 15
 ——— c. 60 (*Newspaper Libel and Registration Act*), 2-9, 176, 191, 192, text, *see* Appendix.
 46 & 47 Vict. c. 51 (*Corrupt and Illegal Practices Act*), 185
 47 & 48 Vict. c. 70 (*Municipal Elections Act*), 186
 49 & 50 Vict. c. 33 (*Copyright*), 40
 51 & 52 Vict. c. 41 (*Local Government Act*), 186
 ——— c. 43 (*County Courts Act*), 114
 52 & 53 Vict. c. 42 (*Accident Insurance*), 23
 ——— c. 96 (*Law of Libel Amendment Act*), 2, 104, 108-122, 143-4, 163, 189, text, *see* Appendix.
 53 & 54 Vict. c. 18 (*Indecent Advertisements*), 25

STATUTORY COPYRIGHT, 39-59. *See* COPYRIGHT.

STOLEN PROPERTY, 21. *See* ADVERTISEMENTS.

SUB-EDITOR, responsibility for libel, 89, 169

SUMMARY, copyright in, 31. *See* COPYRIGHT.

SUMMARY JURISDICTION, 176, 190-192. *See* LIBEL.

"SUPERIOR COURTS OF RECORD," 182. *See* CONTEMPT.

"SUPPLEMENT," definition of, 13

TELEGRAMS, copyright in, 23, 56. *See* COPYRIGHT.

TITLE OF NEWSPAPER, no copyright in, 60

Court will protect, 60
exclusive right to use, 63-64
assignment of, 63

TOWN COUNCIL, "fair and accurate" report, 111

TRUTH AS A DEFENCE, (civil libel), 131-134. *See* JUSTIFICATION.
in French law, 211

TRUTH AND PUBLIC BENEFIT (criminal libel), 175

UNIVERSITY LECTURES, publication of, 37, 39 *See* COPYRIGHT.

VENDOR, responsibility for libel. *See* LIBEL.

VESTRY MEETING, "fair and accurate" report, 111

VEXATIOUS PROSECUTIONS, protection against, 10, 18, 22

VEXATIOUS INDICTMENTS ACT, 19

WRITER, 42, 87. *See* AUTHOR.

LONDON :

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
STAMFORD STREET AND CHARING CROSS.



Second Edition, demy 8vo, cloth, 20s.

PRACTICAL FORMS (A Handbook of). Containing a variety of Useful and Select Precedents required in Solicitors' Offices relating to Conveyancing and General Matters. With numerous Variations and Suggestions. By H. MOORE, Esq., Author of "Instructions for Preparing Abstracts of Title," "Practical Forms of Agreements," &c. Edited by T. LAMBERT MEARS, M.A., LL.D. (Lond.), of the Inner Temple, Barrister-at-Law.

BY THE SAME AUTHOR. Third Edition, demy 8vo, cloth, 20s.

PRACTICAL FORMS OF AGREEMENTS. Containing nearly 200 Forms relating to Sales and Purchases, Building and Arbitrations, Letting and Renting, Debtors and Creditors, and numerous other subjects; with a variety of Useful Notes. Third Edition. By T. LAMBERT MEARS, M.A., LL.D., Barrister-at-Law.

BY THE SAME AUTHOR. Second Edition, crown 8vo, cloth, 7s. 6d.

PRACTICAL INSTRUCTIONS AND SUGGESTIONS TO YOUNG SOLICITORS AND ARTICLED AND OTHER CLERKS in Matters of Daily Practice, especially in Country Offices.

BY THE SAME AUTHOR. Fourth Edition, crown 8vo, cloth, 10s. 6d.

MOORE'S ABSTRACTS OF TITLES. Instructions for Preparing Abstracts of Titles, to which is added a Collection of Precedents. Fourth Edition. With considerable Additions. By REGINALD MERIVALE, B.A., and NORMAN PEARSON, B.A., of Lincoln's Inn, Barristers-at-Law.

Crown 8vo, cloth, 7s. 6d.

WITNESSES (The Practice relating to), in all matters and proceedings Civil and Criminal, at, after, and before the Trial or Hearing, both in the Superior and the Inferior Courts. By WALTER S. SICHEL, M.A. (late Exhibitioner of Balliol College), of Lincoln's Inn, Barrister-at-Law.

Royal 8vo, calf, £1 11s. 6d. net.

ADMIRALTY CASES, 1648-1840. Reports of Cases determined by the High Court of Admiralty and upon Appeal therefrom. Temp. Sir THOS. SALUSBURY and Sir GEORGE HAY, Judges, 1758-1774. By Sir WILLIAM BURRELL, Bart., LL.D., M.P., &c. Together with Extracts from the Books and Records of the High Court of Admiralty and the Courts of the Judges' Delegates, 1584-1830, and a collection of Cases and Opinions upon Admiralty Matters, 1701-1781. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law.

Second Edition, Revised and Enlarged, royal 8vo, cloth, 30s.

FOREIGN JUDGMENTS AND PARTIES OUT OF THE JURISDICTION (the Law and Practice of the Courts of the United Kingdom relating to). By FRANCIS TAYLOR PIGGOTT, M.A., LL.M., of the Middle Temple, Barrister-at-Law.

During the argument in a recent case in the Court of Appeal, Lord Justice Bowen said: "The manner in which Mr. Piggott in his book reconciles the decisions, in HUNTER v. STEWART and HENDERSON v. HENDERSON, I think is very acute and very sensible."

Price 1s. each.

ADDITIONAL NOTES AND RECENT CASES ON SERVICE OUT OF THE JURISDICTION. Being Appendices Nos. 1 and 2 to Foreign Judgments.

Second Edition, Revised, demy 8vo, 704 pp., cloth, 25s.

PATENT LAWS OF THE WORLD. Collected, Edited, and Indexed. By ALFRED CARPMAEL, Solicitor, Member of the Council and Patent Committee of the Society of Arts; Member of the Patent Committee of the British Association; Associate of the Institute of Patent Agents; and EDWARD CARPMAEL, B.A., Patent Agent, late Scholar of St. John's College, Cambridge; Associate of the Institute of Civil Engineers; Member of the Society of Arts; Fellow of the Institute of Patent Agents.

"The book may, without reserve, be recommended as the only complete and satisfactory collection of laws which has yet appeared."—*Law Journal*.

Demy 8vo, cloth, 20s.

PATENT LAWS OF THE WORLD. Being a Supplement to Carpmael's "Patent Laws of the World." Edited by a Committee of Fellows of the Institute of Patent Agents.

"* * This volume and "Carpmael's Patent Laws of the World," form a complete collection of the laws on the subject.